



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 17 मई, 2018/27 वैशाख, 1940

हिमाचल प्रदेश सरकार

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचना

शिमला-2, 04 मई, 2018

संख्या आई0पी0एच0-बी(एच)1-11/2015-कांगड़ा.-यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः फिन्ना सिंह मध्यम सिंचाई परियोजना, तहसील नूरपुर, जिला कांगड़ा के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है अतएव

एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा 11 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों, उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उप-धारा द्वारा अपेक्षित अथवा अनुमत अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति, जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो, तो वह इस अधिसूचना के प्रकाशित होने के तीस दिन की अवधि के भीतर लिखित रूप में कलेक्टर कांगड़ा के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र बीघे/बिस्वे में
1	2	3	4	5
कांगड़ा	नूरपुर	डन्नी खास	612/1	0-00-61
			645/1	0-00-48
			648/1	0-00-57
			649/1	0-00-59
			650/1	0-00-62
			650/1/1	0-00-88
			960/1	0-00-35
			958	0-02-71
			943/1	0-03-57
			946/1	0-03-92
			981/1	0-01-44
			979/1	0-01-53
			980/1	0-02-74
			1578/982/1	0-02-72
			1578/982/2	0-00-03
			977/1	0-01-30

1	2	3	4	5
			995	0-01-98
			1003	0-01-78
			994/1	0-01-41
			993/1	0-00-02
			991/1	0-01-72
			1586/1008/1	0-04-77
			1538/822/1	0-04-05
			783/1	0-03-98
			825/1	0-01-26
			826/1	0-01-55
			1731/775/1	0-00-24
			1730/775/1	0-03-06
			778/1	0-00-18
			777/1	0-00-32
			776/1	0-00-42
			772/1	0-00-88
			429/1	0-00-24
			770/1	0-01-66
			425/1/1	0-00-13
			424/1	0-00-24
			422/1	0-03-97
			419	0-00-36
			418	0-00-28
			417/1	0-00-33
			420/1	0-00-18
			416/1	0-00-64
			413/1	0-00-85
			411/1	0-01-90

1	2	3	4	5
			410/1	0-05-00
			407/1	0-01-60
			1002/1	0-04-44
			1001/1	0-00-64
			999/1	0-02-00
			1374/1	0-01-65
			1376/1	0-02-42
			1377/1	0-01-32
			1379/1	0-01-56
			483/1/1	0-01-90
			484/1	0-00-69
			484/1/1	0-01-99
			483/1	0-00-33
			486/1/1	0-00-75
			218/1	0-02-33
			221/1	0-00-92
			654	0-03-37
			1727/769	0-07-36
			1726/769	0-12-62
			1728/769	0-07-88
			1729/769	0-09-39
			कित्ता.. 65	1-32-62 हैक्टेयर
कांगड़ा	नूरपुर	ठहेड़ मौजा न्यर स्नोह	475/1	0-01-10
			476/1	0-01-38
			484/1	0-06-90
			843/715/452/1	0-00-90
			482/1	0-01-40

1	2	3	4	5
			463/1	0-03-10
			460/1	0-00-65
			458/1	0-00-62
			459/1	0-01-85
			398/1	0-00-71
			709/399/1	0-01-12
			397/1	0-00-60
			482/1	0-01-40
			394/1	0-09-07
			कित्ता.. 14	0-31-82 हैक्टेयर
कांगड़ा	नूरपुर	सोगट मौजा डब्री	535/1	0-00-36
			539/1	0-05-88
			537/1	0-01-10
			593/296/1	0-01-70
			591/295/1	0-00-48
			627/595/297/1	0-00-60
			628/595/297/1	0-01-68
			309/1	0-02-10
			311/1	0-00-81
			316/1	0-01-94
			335/1	0-01-49
			335/2	0-00-06
			332/1	0-01-35
			329/1	0-00-08
			328/1	0-00-78
			388/1	0-01-05
			385/1	0-00-85

1	2	3	4	5
			383/1	0-00-68
			64/1	0-00-09
			65/1	0-02-71
			66/1	0-00-44
			67/1	0-00-64
			578/61/1	0-00-30
			60	0-00-36
			59/1	0-01-52
			572/48	0-05-02
			574/48/1/1	0-03-16
			51/1	0-00-16
			2/1	0-02-47
			545/3/1	0-00-47
			546/3/1	0-02-00
			549/4/1	0-02-44
			165/1	0-03-62
			166/1	0-08-88
			161/1	0-02-95
			157/1	0-01-40
			कित्ता.. 36	0-61-62 हैक्टेयर
कांगड़ा	नूरपुर	मैहला मौजा न्याड़ स्नोह	684/1	0-00-82
			683/1	0-00-61
			685/1	0-00-31
			682/1	0-00-75
			686/1	0-00-73
			690/1	0-00-58
			691/1	0-00-65

1	2	3	4	5
			695/1	0-01-08
			696/1	0-00-81
			698/1	0-03-36
			699/1	0-02-48
			701/1	0-02-35
			729/84/1	0-01-55
			82/1	0-01-50
			702/1	0-00-16
			कित्ता.. 15	0-17-74 हैक्टेयर
कांगड़ा	नूरपुर	न्याड़ मौजा न्याड़ सनोह	369/1	0-00-84
			372/1	0-01-75
			373	0-01-66
			374/1	0-02-29
			667/377/1	0-00-05
			666/377/1	0-00-04
			669/377/1	0-00-21
			668/377/1	0-00-58
			378/1	0-02-00
			384/1	0-01-15
			444/1	0-02-10
			445/1	0-00-94
			447/1	0-02-25
			448/1	0-01-21
			452/1	0-03-20
			476/1	0-03-02
			479/1	0-03-52
			481/1	0-00-22

1	2	3	4	5
			519/1	0-03-19
			228/1	0-05-68
			230/1	0-00-40
			231/1	0-04-93
			613/234/1	0-03-25
			कित्ता.. 23	0-44-48 हैक्टेयर
कांगड़ा	नूरपुर	छौ मौजा खुखेड़ खवाड़ा	233/1	0-04-65
			236/1	0-01-45
			237/1	0-01-73
			230/1	0-02-89
			229/1	0-00-37
			220/1	0-00-60
			223/1	0-02-97
			222/1	0-01-31
			200/1	0-00-15
			199/1	0-00-06
			197/1	0-02-95
			109/1	0-00-53
			110/1/1	0-00-80
			108/1	0-02-03
			95	0-03-26
			94/1	0-00-65
			93	0-01-30
			362/1	0-06-80
			359/1	0-00-93
			358/1	0-01-04

1	2	3	4	5
			365/1	0-01-54
			366/1	0-01-00
			367/1	0-00-33
			कित्ता.. 23	0-41-34 हैक्टेयर
कांगड़ा	नूरपुर	फंगोता मौजा ठेहड़	199/1	0-02-15
			193	0-01-47
			263/1	0-00-59
			258/1	0-00-52
			259/1	0-03-07
			कित्ता.. 5	0-07-80 हैक्टेयर
कांगड़ा	नूरपुर	गमेल मौजा डन्नी	183/1	0-03-06
			188/1	0-01-78
			226/191/1	0-02-28
			227/191/1	0-08-61
			कित्ता.. 4	0-15-73 हैक्टेयर
कांगड़ा	नूरपुर	गतला मौजा ठेहड़	10/1	0-03-16
			9/1	0-01-32
			8/1	0-02-37
			7/1	0-00-99
			457/24/1	0-01-08
			25/1	0-00-50
			26/1	0-00-60
			27/1	0-00-60
			29/1	0-01-07
			48/1	0-01-32
			47/1	0-01-44

1	2	3	4	5
			46/1	0-00-73
			44/1	0-01-08
			43/1	0-02-51
			42/1	0-00-15
			102/1	0-00-25
			101/1	0-02-40
			100/1	0-02-52
			99/1	0-00-58
			97/1	0-03-11
			94/1	0-01-26
			114/1	0-00-17
			116/1	0-00-80
			117/1	0-02-22
			119/1	0-00-45
			118/1	0-01-98
			156/1	0-03-00
			171/1	0-00-36
			214/1	0-02-88
			218/1	0-00-34
			242/1	0-03-64
			241/1	0-00-75
			कित्ता.. 32	0-44-34 हैक्टेयर
कांगड़ा	नूरपुर	मलकवाल मौजा खुखेड़ खुवाड़ा	40/1	0-00-84
			36/1	0-00-50
			35/1	0-01-56
			97/34/1	0-01-20

1	2	3	4	5
			96/34/1	0-00-24
			33	0-00-52
			32	0-00-80
			17/1/1	0-01-77
			17/2/1	0-02-26
			कित्ता.. 9	0-09-69 हैक्टेयर
कांगड़ा	नूरपुर	खुआड़ा मौजा खुखेड़ खुआड़ा	850/1	0-00-54
			839/1	0-01-97
			838/1	0-01-08
			837/1	0-01-93
			836/1	0-02-81
			845/1	0-00-64
			832/1	0-00-65
			834/1	0-04-05
			824/1	0-02-22
			819/1	0-02-07
			818	0-00-48
			813/1	0-02-08
			805/1	0-01-45
			800/1	0-01-69
			796/1	0-03-01
			795/1	0-03-47
			836/2	0-00-10
			825/1	0-00-09
			792/1	0-04-08
			791/1	0-03-24
			751/1	0-00-56

1	2	3	4	5
			752/1	0-01-35
			764/1	0-00-13
			763/1	0-01-67
			755/1	0-00-86
			756/1	0-02-12
			713/1	0-05-20
			712/1	0-01-85
			680/1	0-00-44
			666/1	0-07-43
			666/1	0-02-47
			668/1	0-00-93
			667/1	0-00-28
			669/1	0-01-09
			670/1	0-00-77
			671/1	0-00-90
			672/1	0-01-00
			305/1	0-00-80
			304/1	0-01-54
			303/1	0-00-28
			302/1	0-00-35
			299	0-08-66
			कित्ता.. 42	0-78-33 हैक्टेयर

आदेश द्वारा,

हस्ताक्षरित / -
सचिव (सिंचाई एवं जन स्वास्थ्य)।

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Dharamshala, the 07th October, 2017*

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	76/16	Shakuntla Devi	E.E.HPPWD, Killar	01-08-2017
2.	11/16	Roshan Lal	E.E.HPPWD, Killar	01-08-2017
3.	606/15	Ravinder Singh	E.E. HPPWD, Dalhousie	16-08-2017
4.	131/15	Ruwalu Ram	E.E. HPPWD, Dharampur	19-08-2017
5.	24/16	Pritam Singh	E.E. HPPWD, Dharampur	19-08-2017
6.	106/16	Om Chand	E.E. HPPWD, Dharampur	19-08-2017
7.	103/16	Raj Mal	E.E. HPPWD, Dharampur	19-08-2017
8.	314/16	Gian Chand	E.E. HPPWD, Dharampur	19-08-2017
9.	139/16	Ramesh Chand	E.E. HPPWD, Dharampur	19-08-2017
10.	138/16	Prakash Chand	E.E. HPPWD, Dharampur	19-08-2017
11.	135/16	Beas Dev	E.E. HPPWD, Dharampur	19-08-2017
12.	105/16	Manohar Lal	E.E. HPPWD, Dharampur	19-08-2017
13.	102/16	Raj Kumar	E.E. HPPWD, Dharampur	19-08-2017
14.	104/16	Balbair Sharma	E.E. HPPWD, Dharampur	19-08-2017
15.	01/16	Ramesh Kumar	E.E. HPPWD, Dharampur	19-08-2017
16.	726/16	Prabh Dyal	E.E. HPPWD, Dharampur	19-08-2017
17.	722/16	Balo Devi	E.E. HPPWD, Dharampur	19-08-2017
18.	02/16	Babli Devi	E.E. HPPWD, Dharampur	19-08-2017
19.	47/16	Neela Devi	E.E. HPPWD, Dharampur	19-08-2017
20.	23/16	Vyasa Devi	E.E. HPPWD, Dharampur	19-08-2017
21.	296/15	Bablu Ram	D.F.O. Joginder Nagar	28-08-2017
22.	307/15	Gita Devi	D.F.O. Joginder Nagar	28-08-2017
23.	308/15	Nag Rana	D.F.O. Joginder Nagar	28-08-2017
24.	322/15	Bhagi Devi	E.E. I&PH/HPPWD, Killar	28-08-2017
25.	527/15	Moon Dei	E.E. I&PH/HPPWD, Killar	28-08-2017
26.	567/15	Dharam Chand	E.E. I&PH, Killar	28-08-2017
27.	450/15	Bimla Kumari	E.E. I&PH/HPPWD, Killar	28-08-2017
28.	579/15	Mohan Lal	E.E. HPPWD, Killar	28-08-2017
29.	530/15	Hari Singh	E.E. I&PH/HPPWD, Killar	28-08-2017
30.	494/15	Dharam Pal	E.E. HPPWD, Killar	28-08-2017
31.	523/15	Dev Raj	E.E. I&PH/HPPWD, Killar	28-08-2017
32.	496/15	Dhan Dei	E.E. HPPWD, Killar	28-08-2017
33.	447/15	Hero Devi	E.E. I&PH/HPPWD, Killar	28-08-2017
34.	505/15	Mehar Dei	E.E. I&PH/HPPWD, Killar	28-08-2017

By order,
R. D. DHIMAN (IAS),
Pr. Secretary (Lab. & Emp.).

**IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 76/2016

Date of Institution : 20-02-2016

Date of Decision : 01-08-2017

Ms. Shakuntla Devi d/o Shri Tek Chand, r/o Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Ms. Shakuntla Devi d/o Shri Tek Chand, r/o Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 31-8-2012 regarding her alleged illegal termination of service during October, 2001 suffers from delay and latches? If not, Whether termination of the services of Ms. Shakuntla Devi d/o Shri Tek Chand, r/o Village Pregram, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been appointed on daily wage basis on muster roll in the year 1993 who continuously worked till October, 2001 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous

services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has come to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Tek Chand in 1999, Baldev in 2000, Amar Nath in 2000, Balak Chand also in 2000, Shyam Lal in 2000, Prakash Chand in 2001, Sucheta Ram in 2001, Trilok Chand in 2002, Hari in 2003, Hari Ram in 2003, Ram Dei in 2003 and Budhi Ram in 2003. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 31-8-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.4395/2015 which had been decided on 21-11-2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2001 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1993 to October, 2001. She further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangti Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in Para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is

further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2001, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13-11-2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-10-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 31-8-2012 *qua* her termination of service during October, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of the petitioner by the respondent *w.e.f.* October, 2001 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding operative compensation of Rs.50,000/- per part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2001 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to October, 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 55 days in the year 1994, 81 days in 1996, 55 days in 1997, 117 days in 1998, 127 days in 1999, 103 days in 2000 and 78 days in 2001 and thus a total of her service in 1994 to 2001 in 07 years she had worked for 616 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 78 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex. RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex. RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25- G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2001, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Id. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant

factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S. M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows.—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that he would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief

under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”
(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of Service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul Vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id.

Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 616 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given on 31-8-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less

settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. **Ld. Dy. D.A.** representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, **Ld. Dy. D.A.** representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT
-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 11/2016

Date of Institution : 04-01-2016

Date of Decision : 01-08-2017

Shri Roshan Lal s/o Shri Gulab Singh, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Division Killar, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Roshan Lal s/o Shri Gulab Singh, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 6-10-2011 regarding his alleged illegal termination of service during October, 2005 suffers from delay and latches? If not, Whether termination of the services of Shri Roshan Lal s/o Shri Gulab Singh, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of April, 1997 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has come to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 06-10-2011 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.4403/2015 which had been decided on 23-11-2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2005 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to October, 2005. He further prayed for reinstatement in service alongwith full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather

clarified by stating that petitioner was engaged as daily waged Beldar in 1997 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in Para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in Para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13-11-2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-10-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 06-10-2011 *qua* his termination of service during October, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of the petitioner by the respondent *w.e.f.* October, 2005 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding operative compensation of Rs.80,000/- per part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till October, 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to October, 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there

existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 205 ½ days in the year 1997, 166 days in 1998, 137 days in 1999, 147 days in 2000, 139 days in 2001, 43 days in 2002, 99 days in 2003, 103 days in 2004 and 81 days in 2005 and thus a total of his service in 1997 to 2005 in 09 years he had worked for 1120 days in his entire service period. Be it noticed that petitioner had worked for more than 160 days except the years 1999 to 2005 and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 81 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2005 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in Para No.4

of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex. RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex. RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have worked for more than 160 days in some years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25- G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld.

counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication

as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co- Operative Marketing-Cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”
(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other

judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment, her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of

judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 1120 days as per mandays

chart on record and that the services of petitioner were disengaged in October, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 06-10-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (**2016**) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.80,000 (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000 (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement back wages, seniority, past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 606/2015

Date of Institution : 19-12-2015

Date of Decision : 16-08-2017

Shri Ravinder Singh s/o Shri Bishnu Ram, r/o Village Malwan, P.O. Dharoon, Tehsil Bhatiyat, District Chamba, H.P. at present r/o Village Raleh, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, Dalhousie Division H.P.P.W.D. Dalhousie, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Madan Thakur, Adv.

: Sh. Rajinder Thakur, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Ravinder Singh s/o Shri Bishnu Ram, r/o Village Malwan, Post Office Dharoon, Tehsil Bhatiyat, District Chamba, H.P. at present r/o Village Raleh, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. before the Executive Engineer, Dalhousie Division, H.P.P.W.D. Dalhousie, District Chamba, H.P. vide demand notice dated 29-12-2011 regarding his alleged illegal termination of services June, 1990 suffers from delay and laches? If not, whether

termination of the services of Shri Ravinder Singh s/o Shri Bishnu Ram, r/o Village Malwan, Post Office Dharoon, Tehsil Bhatiyat, District Chamba, H.P. at present r/o Village Raleh, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. by the Executive Engineer, Dalhousie Division, H.P.P.W.D. Dalhousie, District Chamba, H.P. during June, 1990 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged as daily waged beldar by respondent in the year 1984 where he continued to work upto June, 1990. Averments made in the claim petition further revealed that services of the petitioner had been unlawfully terminated by the respondent without assigning any cause as well as any notice despite the fact that at the time funds and work was available with the respondent/department. The grievance of petitioner remains that he (petitioner) had many requests with the respondent/department for re-engagement but of no avail. It is alleged that when respondent had not taken any action regarding his reinstatement thereafter petitioner had approached the leader of labour union in the month of November, 2011. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 29.12.2011 and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 4200/2015 which had been decided on 28.10.2015 directed the Labour Commissioner to consider the case of petitioner in terms of judgment of Hon'ble High Court in CWP No. 9467/2014 titled as Pratap Chand vs. HPSEB and Ors. and thereafter Labour Commissioner *vide* notification dated 4.12.2015 had been sent reference to this Court/Tribunal. The petitioner alleges that respondent in terminating the services of petitioner in the month of June, 1990 without complying with the necessary provisions of the Industrial Disputes Act, 1947 had not followed the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits and regularize the services of petitioner from the date when his juniors had been regularized.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. It is admitted that petitioner was engaged as daily wage basis during the year 1984 where he had worked for 29 days in 1984, 117 days in 1985, 275 days in 1986, 154 days in 1987, 240.5 days in 1988, 234 days in 1989 and 144 days during the year 1990 thereafter the petitioner had left the job of his own accord. It is alleged that petitioner had approached for his reinstatement after about 21 years and at this belated stage, dispute had faded away with the passage of time and no more in existence. It is alleged that the present petition is devoid of merits as such same deserves to be dismissed in the interest of justice. On merits, it is stated that petitioner had been engaged by the respondent at Sub Division Sinhuta in HPPWD Division Dalhousie during the month of December, 1984 whereas petitioner had worked intermittently till June, 1990. It has been specifically denied that petitioner had worked with the respondent/department continuously *w.e.f.* 1984 to June, 1990 who had worked intermittently and thereafter petitioner had left the work of his own sweet will and therefore question of termination in violation of Section 25-F did not arise as petitioner himself has abandoned the job. It is denied that the services of petitioner had been terminated by the respondent who had not completed 240 days in each calendar year and he had not fulfilled the criteria of Section 25-B of the Industrial Disputes Act, 1947. Delay in filing the claim

petition is stated to be fatal to the case of petitioner who was also gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of demand notice, Order dated 22.5.2014 Ex. PW1/C, mandays chart Ex. PW1/D and Annexure and Mark-A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Jagtar Singh the then Executive Engineer, Dalhousie Division, HPPWD Dalhousie, District Chamba, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.11.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 29.12.2011 *qua* his termination of service during June, 1990 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP.*
2. Whether termination of services of the petitioner by the respondent *w.e.f.* June, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

<i>Issue No. 1</i>	: Yes
<i>Issue No. 2</i>	: Yes
<i>Issue No. 3</i>	: Discussed
<i>Issue No. 4</i>	: No

<i>Relief</i>	: Petition is partly allowed awarding compensation of Rs. 65,000/- per operative part of award.
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REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order of June, 1990 *qua* his illegal termination and has sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to any another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1984 on daily wage basis who continued to work till June, 1990 when his services were terminated without paying any retrenchment compensation or notice under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as persons junior to the petitioner had been retained in service and for said reason provisions of Section 25-G of the Act was not followed by the respondent. The mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the year 1984, 117 days in 1985, 275 days in 1986, 154 days in 1987, 240.5 days in 1988, 234 days in 1989 and 144 days in 1990. Even if we look at the mandays chart, this would show that immediately preceding his termination, petitioner has factually worked for more than 240 days and would be deemed to be in continuous service for the purpose of Section 25-B of the Industrial Disputes Act and therefore provisions of Section 25-F of the Act is fully applicable and in that situation respondent was required to mandate either issue notice envisaged under Section 25-F of the Act or to pay wages of one month in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter calling upon him to join duties or disciplinary proceedings should have been initiated. On this point, respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued to him as stated above. RW1 has specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1990. No reason whatsoever has been assigned for such an omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. Thus, *prima facie* stand taken by the respondent *qua* abandonment gets belied as plea of abandonment has to be proved like any other fact in issue. As such, in absence of any specific cogent and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Industrial Disputes Act is held to have to have been proved by the petitioner.

14. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld Dy. D.A. for State has relied upon

judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

15. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of each case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied in this case.

16. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of June, 1990 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

17. Ld. Dy. D.A. has representing State/respondent has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Counsel for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the

judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court has specially observed that the **High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court.** It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but **certainly correctness of reference under Section 10 of Industrial Disputes Act in this case is not in challenge before this Court.** Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra).** In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which petitioner was denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court as petitioner in case before Hon'ble Apex Court was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer for manual work by respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra.** Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **seven years** who was non-skilled worker ageing 43 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 1193 days from the year 1984 to 1990 irrespective of fact that demand notice was issued after a period of 21 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above, a lump-sum compensation of Rs. 65,000/- (Rupees sixty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, respondent/department has failed to allege in reply in what manner petition is not maintainable. However at the time of arguments petition is stated to be not maintainable in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which does not apply to the present case for reasons detailed in foregoing paras No.

17 & 18 of this judgment as stated above. Even from pleadings and evidence on record it cannot be stated that claim petition is not maintainable. Accordingly, issue No. 4 is decided in favour of petitioner and against the respondent.

Relief:

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room. Announced in the open Court today this 16th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 131/2015
Date of Institution	: 21-03-2015
Date of decision	: 19-08-2017

Shri Ruwalu Ram s/o Shri Ambka Ram, r/o V.P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. through Himachal Pradesh Lok Nirman Vibhag Karamchari Mahasangh, Branch Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Shri N.L. Kaundal, AR
	Shri Vijay Kaundal, Adv.

For the Respondent

: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference under Section 10 of Industrial Disputes Act, 1947 has been received from the appropriate Government for adjudication:

"Whether demand raised *vide* demand notice dated 21-08-2012 by Shri Ruwalu Ram s/o Shri Ambka Ram, r/o V.P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. through Himachal Pradesh Lok Nirman Vibhag Karamchari Mahasangh, Branch Dharampur, Tehsil Sarkaghat, District Mandi, H.P. regarding regularization of his daily wages services from the date of regularization of his juniors by the department in the month of October/November, 2008 from the Executive Engineer Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P. is legal and justified? If yes, to what relief, past service benefits, seniority and other consequential service benefits the above workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Averments made in the claim revealed that claimant/petitioner had been engaged as blacksmith on daily wage basis by the respondent/department on 1-6-1998 on the basis on muster roll who continuously worked upto 7-7-2005. The petitioner claims to have been appointed without any written order of respondent. It is alleged that petitioner alongwith 1086 workmen had been retrenched who were also paid retrenchment compensation. Aggrieved with retrenchment order, petitioner approached Labour-cum-Conciliation Officer, Mandi but conciliation could be effected in pursuance to which failure report was sent to appropriate government and consequently reference was made to this Court where Reference No. 360/2009 was registered and decided on 2-7-2010. It is alleged that *vide* Award dated 2-7-2010 passed in Reference No. 360/2009 filed by the petitioner in which the Court had initially directed reinstatement of petitioner along-with continuity in service from the date of retrenchment *i.e.* 8-7-2005 with 50% back wages but the Hon'ble High Court in appeal modified the order in which besides the main relief a lump sum compensation of Rs. 50,000/- in lieu of 50% back wages and litigation expenses. In pursuance to the above said Award passed on 2-7-2010, the petitioner was reinstated in service and sum of Rs. 50,000/- was paid in lieu of back wages and thereafter the petitioner continued worked upto 30-6-2013. Thus, the petitioner claims to have served the department from 1-6-1998 till the date of superannuation and from 8-7-2005 till date of his reinstatement as this period was counted in continuity in service alongwith seniority per the direction of award and with this analogy, petitioner had rendered 15 years continuous service. The grievance of the petitioner also remains that the State Government had not regularized him in accordance with policy for regularizing daily wagers who have rendered eight years of continuous service. Although immediate junior to the petitioner are stated to have been regularized by the respondent/department in which they have been given pay scale of Rs. 5900-20200 and grade pay of Rs. 2400/- and other consequential benefits. It is alleged that even at the time of retrenchment of petitioner, respondent/department had not followed the principle of 'Last come First go' and retained junior to him and thereafter their services were regularized for the post of blacksmith. The persons who have been regularized are Suresh Kumar (16-11-1998), Shyam Singh (19-11-1998), Pawan Kumar (19.11.1998), Parveen Kumar (6-10-1998), Subhash Chand (10-6-1998), Rajender Kumar (8-7-1998), Vinod Kumar (1-9-1998) and Narinder Kumar (6-6-1998). It is alleged that since the above named workmen who were junior to the petitioner have been regularized in regular pay scale of Rs. 5900-20200 plus grade pay Rs. 2400/- with all consequential benefits with effect from November, 2008, the

petitioner also claims the same benefits till the date of his retirement besides he has also prayed for release of difference of arrears till the date of superannuation *i.e.* 30-6-2013 after refixation his salary after regularization from November, 2008. It has also been prayed that the respondent be directed to pay the difference of arrears from the date of regularization till the date of superannuation and on failure to arrears interest @ 18% along-with cost of litigation of Rs.10,000/- be also awarded.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objection of maintainability, delay and laches. On merits, admitted that petitioner had been engaged on 13-6-1998 who worked upto 7-7-2005 and was retrenched from service on 8-7-2005 by respondent. It is alleged that while retrenching the services of petitioner he was given three months notice besides retrenchment compensation as envisaged under the Rules which was accepted by the petitioner without any protest. It is further admitted that after retrenchment, petitioner had filed reference No. 360/2009 before this Court which had passed an Award in favour of petitioner after scrutinizing all relevant record in which it was held that petitioner had completed 240 days in each calendar year. It is alleged that respondent requested the petitioner to submit relevant record to Divisional Office so that the regularization could be made when petitioner had submitted the required documents which revealed that the date of birth of petitioner was 7-6-1953 and being Class-III post of blacksmith as per the R&P Rules, the Class-III post officials were to retire at the age of 58 years. It is alleged at that time petitioner had completed the age of 58 years *i.e.* on 1-8-2011 and remaining workers who were working as blacksmith were also regularized from same dated when petitioner requested that he be retained till the age of 60 years which was accepted. The petitioner had worked as daily wage upto 6/2013 and after completion of 60 years of age he got retired. Admitted that petitioner along-with 1087 workers were retrenched during the year 2005. It is alleged that on the request of petitioner he was retained upto the attaining the age of 60 years per the order of this Court as alleged in para No. 6 of the reply petitioner had been reengaged who worked upto completion of 60 years of age. Accordingly, alleging the reference petition to be devoid of merit has been prayed to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, copy of retirement order dated 20-6-2013 Ex. PW1/B, copy of demand notice dated Ex. PW1C, copy of notification dated 9-8-2009 Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Naresh Kumar Gupta, the then Executive Engineer, HPPWD Dharampur as RW1, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of seniority list of class-III daily wages workers who had completed eight years as on 31-3-2010 Ex. RW1/C and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 09.12.2015 for determination:

1. Whether the demand raised *vide* demand notice dated 21.8.2012 by the petitioner through HP Lok Nirman Vibhag Karamchhari Mahasang, Branch, Dharampur regarding regularization of his daily wages services from the date of regularization

- of his juniors by the respondent/department in the month of October/November, 2008 is illegal and unjustified as alleged. If so, its effect? . . . *OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
 3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
 4. Whether the petition is suffers from the vice of delay and laches as alleged. If so, its effect? . . . *OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, claimant/petitioner was appointed as blacksmith on daily wage basis on muster roll in June, 1998 by the respondent/department who had continuously worked till 7-7-2005 when he was retrenched from service by respondent. It is equally admitted case of the respondent that respondent/department had been retrenched alongwith 1086 other workers who were paid retrenchment compensation at the time of retrenchment. It is admitted case of the parties that claimant/petitioner was reengaged in pursuance to Award passed in Reference No. 360/2009 filed by petitioner which was decided on 2-7-2010 whereby claimant/petitioner was directed to be reinstate along-with continuity in service from the date of unlawful retrenchment and back wages of 50% which was later modified in CWP filed before Hon'ble High Court whereby a sum of Rs. 50,000/- was awarded in lieu of back wages and litigation expenses. It is also admitted case of the parties that petitioner had served copy of Award dated 2-7-2010 in pursuance to which he was reengaged besides he had also been paid compensation of Rs. 50,000/- awarded by this Court. It is admitted case of the parties that petitioner had worked till 30.6.2013 on attaining the age of 60 years when superannuated. It is equally admitted case of the parties that claimant/petitioner being a Class-III employee had worked as blacksmith who retired at the age of 58 years on basis of R&P Rules on 1-8-2011 when other workmen in same category were to be regularized and on the request of petitioner he was allowed to continue in service till the age of 60 years. In the backdrop of foregoing admitted the facts of

record, evidence adduced by the parties needs to be scanned to determine the claim of the petitioner.

12. Stepping into witness box PW1, petitioner has sworn in affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. While reiterating his stand as aforesaid, claimant/petitioner has also filed Ex. PW1/B copy of retirement order dated 20.6.2013. In cross-examination he has admitted to have been received retrenchment compensation and notice in July, 2005 but filing claim petition in reference No. 360/2009 Award was passed when petitioner was reengaged in 2010. He has admitted to have issued demand notice in the year 2012 and that he retired from service of respondent/department at the age of 60 years but he had denied that he had retired at the age of 58 years and on his request was engaged as daily waged worker. Repudiating the evidence adduced by the petitioner, respondent RW1 Shri Naresh Kumar Gupta, Executive Engineer, HPPWD Dharampur Division has sworn in affidavit Ex. RW1/A in which he has admitted the claim of the petitioner with regard to his date of appointment and till he was retrenched and was directed to be reinstated with compensation of Rs.50,000/- and continuity in service restoring his seniority. It is pertinent to mention here that petitioner as PW1 has deposed on oath to have been engaged on 1.6.1998 whereas respondent in reply as well as has repudiated petitioner's claim by stating that he was engaged on 13.6.1998 and not on 1.6.1998 and his version is also substantiated for seniority list Ex. RW1/C revealing petitioner to have been engaged who joined on 13.6.1998. As such plea of petitioner that he was engaged on 1.6.1998 cannot be accepted rather petitioner is held to have been engaged on 13.6.1998. He had specifically admitted in cross-examination that petitioner was found to have worked for eight years with 240 days in each calendar year when respondent requested to petitioner to submit all relevant records to Division so that services of petitioner could be regularized but the petitioner had submitted documents which revealed petitioner to have been borne on 7.6.1953 and being a Class-III employee working on the post of blacksmith as per R&P Rules, he was retire at the age of 58 years *i.e.* 1.8.2011 and that time other workers were regularized and request of petitioner that he continued to work upto the age of 60 years. when he completed of 60 years of age as is evident from Ex. PW1/B the order of superannuation dated 20.6.2013 issued by Assistant Engineer, B&R Sub Division HPPWD Marhi revealing that petitioner was to retire on 30.6.2013. In cross-examination respondent has admitted the case of petitioner in totality with regard to period for which he worked and number of days he worked.

13. It can be gathered from Ex. RW1/B the mandays chart filed by Executive Engineer, HPPWD Dharampur Division, petitioner had worked for 179 days in 1998, 385 days in 1999, 362 days in 2000, 351 ½ days in 2001, 351 days in 2002, 345 days in 2003, 357 days in 2004 and 186 days in 2005 and thereafter on being reengaged he had worked for 91 days in 2010, 361 ½ days in 2011, 366 days in 2012 and 181 days in 2013. RW1 has specifically admitted in cross-examination that petitioner was reengaged on job in October, 2010 but no record has been proved by respondent which would show that date of birth of petitioner was 7-6-1953. There is nothing in evidence to show that petitioner had requested for retaining him in service till 2013 and his request was accepted. If petitioner was to retire in 30.6.2011 the respondent ought to have proved documentary evidence which would have strengthen the plea of respondent *qua* petitioner having requested for engaging him till the age of 60 years. Not only this, respondent RW1 has admitted petitioner would be deemed to his continuous service since 1.6.1998 who had completed 10 years of service as on 31.12.2008 although RW1 has shown his ignorance with regard to regularization policy of 08 years and 10 years made by the government. Significantly, while denying the policy of regularizing workers daily wagers after rendering 10 years of service has specifically admitted that blacksmith who worked with the respondent/department in the year 1998 have been regularized from November, 2008 and fixed their salaries in their regular scales along-with other benefits. That being so the respondent had

apparently accepted the claim of petitioner with regard to his entitlement of regularization after 08 years of regular uninterrupted service.

14. While referring to seniority list Ex. RW1/C, Id. Counsel/Authorized Representative for petitioner has contended with vehemence that the name of petitioner figured at serial No.4 who were appointed on 13-6-1998 and was reengaged on 1-1-2010 at Marhi. The working days shown in Ex. RW1/B corresponds that working days as reflected in Ex. RW1/C. It can be observed from the Ex. RW1/C that claimant/petitioner had not worked in the years 2006, 2007, 2008 and 2009 due to retrenchment but due to award passed in reference No. 360/2009 period for the year 2006, 2007, 2008 and 2009 the petitioner was given seniority from back date. However, he was engaged for 16 years but the mandays chart shows that petitioner to have worked for 91 days in 2010 in any case the seniority of the petitioner coupled with cross- examination of RW1 it can be safely concluded that category of co-workers/ blacksmiths who have been appointed in the year 1998 till 2000 had been regularized. In the note appended in Ex. RW1/C it is stipulated that seniority reflected from 09-2-2004 to 29-3-2004 has been assigned to above daily waged workers but not counted in the list as per order of Conciliation Officer-cum-Joint Labour Commissioner H.P. *vide* memorandum dated 29-3-2004 said memorandum was withheld by respondent for reasons best known to it. The grievance of petitioner also remains that the blacksmith working on daily wage basis who were appointed after him have been regularized in service as per policy of the government aforesaid and while doing so policy of 'Last come First go' was not followed. The policy Ex. PW1/D deals with regularization of workers also stipulated under it norm No. (xiii) **that *inter se* seniority of Daily Waged workers shall be determined in order of regularization of such daily wagger based on seniority as wagger.** Be it noticed RW1 respondent has categorically admitted that several workers who were working with petitioner in 2008 were juniors to petitioner. That being so, respondent has certainly not followed doctrine of "Last come First go" envisaged under Section 25-G of Industrial Disputes Act. Since there is no dispute with regard to petitioner having working continuously eight years of service with 240 days in each calendar year petitioner who was figuring at serial No. 4 of seniority list Ex. RW1/C was certainly senior to other blacksmith daily wages worker shown in list. Since RW1 has unequivocally admitted plea of petitioner that blacksmiths who worked with respondent in 1998 have been regularized in the year 2008 and thus services of petitioner was also regularized under the same policy of government *i.e.* petitioner had worked for more than eight years *i.e.* 240 days all the 8 years. Reliance has been placed by Id. counsel/AR for petitioner on regularization policy of Daily Wage Worker Ex. PW1/D of Government of H.P. It specifically provided that the Government of H.P. has decided that Daily Wage Worker in all the department including PWD and IPH who had completed 8 years continuous service with minimum 240 days in a calendar year are to be regularized as against vacant post as on 31.3.2008. It is specifically provided in the policy that regularization shall be from prospective date *i.e.* after the date order of regularization is issued besides it also provided that 8 years continuous service is only criteria. In view of the foregoing discussions, it can be safely concluded that petitioner had worked continuously from 1st June, 1998 till 30-6-2013 and that the intervening period when he had retrenched initially on 7-7-2005 was directed to be reinstated who was consequently appointed and continued to work upto 20-6-2013 and as such it can be safely concluded that petitioner had rendered continuous service of 15 years as stated above moreso when the Award dated 2-7-2010 stipulated that petitioner shall be deemed to be in continuous service with consequential benefits and when he was appointed in pursuance to Award dated 2-7-2010 he continued to work till 30-6-2013. Since plea of respondent that he was to retire at the age of 58 years but was not retired at request of petitioner and was retained till 30-6-2013 appears to more or less a consent matter *inter se* parties but certainly there is no documentary evidence to substantiate the plea of respondent on this score and such same cannot be relied upon by this Court. Accordingly, demand notice dated 21-8-2012 Ex. PW1/C issued by claimant/petitioner with regard to regularization of his daily

wage service from date of regularization of juniors by the department in the month of November, 2008 is held to be legal and justified and entitled to be given benefits of having rendered continuous service of **eight** years in the year 2006 has also been admitted by respondent on oath in cross-examination besides other juniors to petitioner as reflected in seniority list Ex. RW1/C were regularized in November, 2008, the petitioner would also be entitled to relief of regularization from the month of November, 2008. Accordingly, issue No.1 is answered in affirmative and for said reason petitioner would be entitled for regularization benefit under the policy and other consequential benefits including difference of arrears of re-fixation of salaries and allowances of claimant/petitioner from 2008 till 30-6-2013. Issue No.2 is answered accordingly.

Issue No.3 :

15. This issue was not pressed as such decided as unpressed however it has been specifically alleged in the reply of respondent in what manner claim petition is not maintainable. It can be notice from the findings foregoing wherein petitioner was illegally retrenched on 7-7-2005 and thereafter reinstated in service in the year 2010 who continuously worked upto 30-6-2013 and as such would be entitled to treated at par with his other colleagues workers who had been regularized after rendering eight years of service. As such, petition filed by the petitioner cannot be stated to be not maintainable. This issue is answered in negative in favour of petitioner and against the respondent.

Issue No.4 :

16. Ld. Dy. D.A. representing respondent/department has contended that claim petition is bad on delay and laches. I see force in this arguments that petitioner was retired from service on 30-6-2013 preceded by demand notice dated 21-8-2012. It can be noticed from findings that petitioner had earlier been retrenched from service who was reinstated on the basis of Award passed by this Court/Tribunal during this period there was no delay in approaching the appropriate authority for redressal his grievance and even after issuance of notice, the reference was received from appropriate government on 10.3.2015. Therefore there is neither delay nor laches on the part of the petitioner otherwise also in view of provision of Section 137 of Limitation Act law of limitation does not apply in industrial/labour dispute as has been held in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. Hence, this issue is decided in favour of petitioner and against the respondent.

Relief:

17. As sequel to my findings on foregoing issues, claim of petitioner is hereby allowed and the respondent is hereby directed to regularize the services of petitioner when other co-workers working with petitioner as reflected in seniority list Ex. RW1/C were regularized by the respondent in the year 2008 as per policy governing Regularization Daily Wagers as Ex. PW1/D framed by State Govt. and operative from time to time. It is further held that the petitioner shall be deemed to be in continuous service of respondent from 13-6-1998 to 31-3-2013 with all consequential *i.e.* continuity and seniority in service benefits. It is further directed that respondent/department shall after regularizing service of petitioner as per policy of government of H.P. aforestated shall carry out re-fixation of salary in new scales of category of blacksmiths from November, 2008 and thereafter all the arrears of salary and other benefits admissible to petitioner shall be paid to petitioner within **six** months from date of receiving copy of this Award and on failure to do within stipulated time aforestated, respondent shall be liable to pay interest

@ 12% an arrears accrued to the petitioner from the date of regularization. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room. Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 24/2016

Date of Institution : 20-01-2016

Date of Decision : 19-08-2017

Shri Pritam Singh s/o Late Shri Sita Ram, r/o Village Sohar, P.O. Sandhole, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Pritam Singh s/o Late Shri Sita Ram, r/o Village Sohar, P.O. Sandhole, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. during December, 2005 allegedly without complying the provisions of the Industrial Disputes Act, 1947, is legal

and justified? If not, keeping in view the delay of more than 4 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) filed by the claimant/petitioner revealed that petitioner had been engaged by respondent as beldar in January, 2000 and that claimant/petitioner continuously worked upto December, 2005 who had completed more than 240 days in each calendar year and thus petitioner covered under the definition of 'continuous service' envisaged under Section 25-B of the Act. The averments made in the claim petition further revealed that the services of the claimant/petitioner had been unlawfully terminated by the respondent *i.e. vide* verbal order in December, 2005 without prior intimation besides requirement of Section 25-F of the Act was not complied neither one month's notice nor retrenchment compensation was paid to him. It further transpires from claim petition that at the respondent/department at the time had terminated the services of more than 1000 daily wagers who were engaged by respondent in HPPWD Dharampur Division from time to time without following procedure. It has been specifically alleged that at the time of termination of the services of petitioner, department/respondent had even not followed the principle of "Last come First go" envisaged under Section 25-G of the Act as some junior workmen namely Prabhu Ram (01-8-1998), Shashi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (01-01-2000), Ajay Kumar (01-12-2003), Pradeep Kumar (23-11-2007) and Lekh Raj (11/2004) were retained by the respondent/department. It further transpires from the claim petition that after termination of the services of petitioner fresh hands had also been appointed by the respondent/department *i.e.* one Satya Devi who had been appointed on 27-1-2011 but respondent had not been given any opportunity of reemployment to petitioner thereby respondent had also violated the provisions of Section 25-H of the Act. It is alleged that aggrieved with the action of the respondent violating Sections 25-F, 25-G and 25-H, petitioner had raised industrial dispute and copy of the same was forwarded to Labour Officer, Mandi who had tried to settle the dispute amicably but Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act to appropriate government *i.e.* Labour Commissioner, Shimla who turned down prayer of petitioner to refer the case of petitioner for adjudication to this Court on the ground that dispute inter se parties did not exist. Again aggrieved with the order passed by the Labour Commissioner, Shimla, claimant/petitioner filed CWP No. 4407/2015 before the Hon'ble High Court of H.P. which was allowed in his favour *vide* order dated 23.11.2015 whereby Labour Commissioner was directed to refer dispute for adjudication to Labour Court Dharamshala. The petitioner had also highlighted the case of one Sanjay Kumar s/o Shri Purbia Ram who had filed CWP No. 8315/2012 which was allowed and said Sanjay Kumar alongwith other co-workers had been awarded back wages, continuity in service as well as past service benefits who was entitled to all benefits except actual back wages. Accordingly, alleging the act of respondent in terminating service of petitioner *w.e.f.* December, 2005 without complying necessary provisions of the Act, the same was illegal in violation of provisions of Industrial Disputes Act. Moreover, the petitioner did not remain gainfully employed either government department or private organization from the date of his illegal termination who is entitled for back wages. Accordingly, illegal termination order has been prayed to be set aside with direction to respondent to reinstate petitioner in service with full back wages, seniority, continuity in service and with all consequential service benefits. It has also been prayed that respondent be directed to regularize the services of petitioner on basis of policy framed by the government besides on the basis of seniority and has further prayed for cost of litigation to the tune of Rs.5,000/- from respondent.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits, admitted to the extent that petitioner was engaged as daily waged beldar in January, 2000 who had worked intermittently upto November, 2003. It has been denied that petitioner had worked with the respondent upto December 4, 2005 and thereafter he had left the job at his own sweet will who had not completed 240 days as was required under Section 25-F of the Act so as seek benefits of continuous service as envisaged under Section 25-B of the Act and since the petitioner had failed to prove to establish continuous service as envisaged under Section 25-B of the Act no notice was required to be served upon him. It also remains plea of the respondent that petitioner had abandoned job at his own sweet will. However, denied that service of petitioner was terminated by respondent in December, 2005. It is alleged that since petitioner had left the job at his own will and worker Prabhu Ram, Shashi Pal and Roshani Devi attended work with the department continuously however, Mamta and Inder Singh had been engaged on compassionate ground. As such, there was no violation of the Section 25-G of the Act. Allegation of retrenching the petitioner in December, 2005 was emphatically denied although admitted that petitioner had filed demand notice in 2013 after about 12 years but never approached the respondent and the delay was not satisfactorily explained who was not entitled for any relief from the Court. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of RTI information dated 13-11-2013, Ex. PW1/B, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18-3-2015 supplied under RTI Act showing list of workers appointed on compassionate grounds Ex. PW1/E, copy of letter dated 28-2-2017 & copy of demand notice dated 18-5-2010 Ex. PW1/F, copy of order dated 26-12-2012 of Labour Commissioner Ex. PW1/G, copy of order dated 23.11.2015 Ex. PW1/H, Ex. PX reply filed by respondent to notice dated 18-5-2010 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-1-2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent during December, 2005 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner being daily waged beldar appointed in January, 2000 by the respondent and respondent being petitioner's employer is not in dispute. It remains the case of the petitioner that he had continuously worked till December, 2005 reiterating contents of affidavit Ex. PW1/A and other documentary evidence and thus had completed 240 days in each calendar year. Be it stated that the claim of the respondent remains inconsistent as respondent had alleged that petitioner had been engaged as daily waged beldar in January, 2000 who worked till November, 2003 intermittently. Similarly, the mandays chart Ex. RW1/B relied by the respondent shows the working days of petitioner to have worked till December, 2003 and not December, 2005. It would be therefore relevant to decide till what particular time the petitioner had worked with the respondent/department as his engagement in January, 2000 is not in dispute.

12. To appreciate controversy it would be relevant to refer to order of the Labour Commissioner dated 26-12-2012 Ex. PW1/G which specifically stipulates that petitioner had worked with the respondent upto December, 2005 who raised demand notice on 18-5-2010 after more than four years. This fact further finds support from demand notice Ex. PW1/F demand notice dated 18-5-2010 in which contents mentioned in para No.1 specifically allege that petitioner was engaged in January, 2000 and worked upto December, 2005 and this fact was categorically admitted by respondent in reply Ex. PX para No.1 of the said demand notice. As such aforestated documentary evidence complied with testimony of PW1 on oath establish that petitioner had factually worked till December, 2005 and not till 2003. Thus, testimony of respondent which is not in consonance with documentary evidence *i.e.* reply Ex. PX filed by respondent itself negates plea of respondent on the point of petitioner to have worked till November, 2003 that petitioner had worked upto November, 2003. On the other hand, the version of petitioner that he had worked upto December, 2005 can be safely relied for reason stated in foregoing paras.

13. Now referring to mandays chart Ex. RW1/B it can be safely inferred from the records that in the year 2000 petitioner had worked for 349 days whereas in 2001 he had worked for 358 days, 320½ days in 2002 and in 2003 petitioner had worked for 159 days. The plea of respondent remains that petitioner had abandoned the job who was earlier attending the work assigned to him intermittently. There is nothing on record to show that when petitioner did not attend the work particularly after 2003 as per the case of the respondent, no notice was given to him calling upon him to join duties and mere allegation that petitioner had

abandoned the job could not be accepted more particularly no notice was issued as no enquiry was conducted on the unauthorized absence of duty of petitioner. No reason whatsoever has been assigned by respondent for such inaction or omission for not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as plea of abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Accordingly, the plea of respondent that claimant/petitioner had abandoned the job merits rejection.

14. Stepping into witness box as PW1, petitioner has sworn his affidavit Ex. PW1/A wherein he has reiterated his stand as maintained in the claim petition. Since this court does not accept the claim of respondent that petitioner had worked till November, 2003 the services of petitioner were illegally terminated in December, 2005 is to be accepted more specifically in view of finding in para no.11 of this Award. In the detailed cross-examination of the petitioner as PW1 by Id. Dy. D.A. it is revealed that petitioner had worked upto December, 2005. The petitioner has specifically denied that he had abandoned the job of his own although denied that he had not represented from 2005 to 2010 but certainly there is no iota of evidence on record suggesting that any notice was served upon the petitioner calling upon him to join duties. Moreover when respondent had removed the petitioner from service once by this Court has holding that petitioner had not abandoned the job. It was also necessary for the respondent to issue notice prior to termination or must have paid retrenchment compensation envisaged under Section 25-F of the Act. Significantly, RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Dharampur in cross-examination has admitted that after abandoning the job by the petitioner no correspondence was made with him and has also admitted that petitioner had not been given retrenchment compensation as per record available in the office. Therefore this Court is of the view that respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947.

15. Ld. Counsel/Authorized Representative for the petitioner vehemently argued that respondent while retrenching the services of petitioner had also violated the provisions of Section 25-G of the Act. He has referred to para No.4 of the claim petition in which he has specifically mentioned names of Prabhu Ram, Roshani Devi, Mamta Devi, Inder Singh, Ajay Kumar, Pradeep Kumar and Lekh Raj who had been appointed in 1998, 1999, 1999, 2000, 2000, 2003, 2007 and 2004 respectively. In cross-examination of respondent it has specifically admitted that the names worker who had been mentioned in para No. 4 of the claim petition were junior to petitioner and were regularly working with the respondent/department. RW1 has also admitted that Prabhu Ram, Shashi Pal, Roshani Devi had joined in the year 1998 or before whereas the petitioner had joined in January, 2000. The persons mentioned in para No. 4 of the claim petition namely Mamta Devi, Inder Singh, Ajay Kumar, Pardeep Kumar and Lekh Raj had been appointed after termination of the services of the petitioner besides they were admittedly junior to the claimant/petitioner. Thus retaining junior persons and retrenching services of senior person who happens to be claimant/petitioner, respondent had clearly violated the provisions of Section 25-G of the Act. It is therefore held that respondent had violated the provisions of Section 25-G of the Act.

16. In so far as the violation of the provisions of Section 25-H of the Act by the respondent, suffice would be to state here that one Smt. Satya Devi w/o Shri Suresh Kumar was appointed in 27-1-2011 as alleged in para No. 5 of the claim petition. In reply to said para, it is alleged that since petitioner had left the job at his own sweet will the worker as mentioned in the said para was engaged on compassionate ground and the question of giving opportunity to petitioner does not arise and thus there is no violation of Section 25-H of the Act. No record has been produced by the respondent so as to establish that Smt. Satya Devi had been appointed on

compassionate ground. Certainly she was appointed much after termination of service of petitioner and this fact has not been disputed by the respondent. Thus, appointing fresh hands after termination of service of petitioner no opportunity had been given for reemployment to the petitioner which clearly violates the provisions of Section 25-H of the Act. The respondent could not be wriggle out of his responsibility calling upon the petitioner to seek reemployment when he contemplated engaged said Satya Devi. Even in cross-examination of PW1 engagement of said Satya Devi was not repudiated by the Id. Dy. D.A. for respondent while cross-examining and thus the fact which is not disputed in cross-examination is held to have been proved and hence it is held that respondent had violated the provisions of Section 25-H of the Act as well. In view of the foregoing discussion, it can be safely concluded that the services of petitioner had been retrenched in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Ld. Counsel/Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void *ab-initio*. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages.

17. Ld. Counsel/Authorized representative for the petitioner vehemently argued that petitioner was illegally terminated in December, 2005 without any notice or retrenchment compensation who approached the office of the Labour Officer, Mandi where sufficient time took place and the Labour Officer, Mandi had submitted his failure report in the year 2012 in pursuance to which Labour Commissioner *vide* order dated 26-12-2012 had rejected making reference to Labour Court-cum-Industrial Tribunal for adjudication. It has been observed that aggrieved with the order of Labour Commissioner, the petitioner preferred CWP No. 4407/2015 *vide* which the Labour Commissioner was directed to make reference to this Court/Tribunal for adjudication in pursuance to the said direction passed by the Hon'ble High Court of H.P., the Labour Commissioner had made reference on 8th January, 2016 and thereafter claim under Section 10 of Industrial Disputes Act was filed and has now reached at the stage of orders and thus sufficient explanation has been given for the delay moreso when the petitioner was unskilled labourer fall in the category of beldar and that matter was brought before Labour Officer, Mandi by issuing demand notice Ex. PW1/F dated 18-5-2010. From December, 2005 to 18-5-2010, the petitioner claims to approach the authority who had not pay heed to his request. Be it stated at this stage that once period of engagement has not been disputed in reply as well as in cross-examination.

18. Ld. Dy. D.A. representing respondent/department has pointed out that retrenchment of petitioner in this case took place on December, 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument advanced by Id. Dy. D.A., Id. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by

employer is required to be proved as a matter of fact. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches.

19. In so far as the plea of the claimant/petitioner that after his illegal termination by the respondent in December, 2005, petitioner remained out of job who had no income as alleged in para 9 of affidavit Ex. PW1/A besides having not been gainfully employed anywhere in the government or private organization due to which entitled for full back wages from illegal termination with consequential benefits. Reference is made to cross-examination of the petitioner, Id. Dy. D.A. has pointed out that petitioner has in unambiguous terms admitted that he had worked as daily wage labourer and having cultivable land which establishes that petitioner had income from other source. Since claimant/petitioner had sufficient income from cultivable land and working as daily wage labourer as admitted by him, it cannot be stated that he had no income after his termination as projected by petitioner as per claim. As such, it is held that petitioner is not entitled for back wages as claimed by him however he shall be reinstated in service respondent having violated Section 25-F besides that petitioner would be entitled for seniority and continuity in service from the date of demand notice dated 18-5-2010 Ex. PW1/F. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court has held that if the applicant/workman was wrongfully terminated, **the burden of proving that he was gainfully employed lies on the employer and if burden of proof not discharged, workman would be entitled of full back wages.** In the case in hand, petitioner has led positive evidence stipulating therein that he was not gainfully employed after his illegal termination and that he has remained unemployed but he himself as admitted in cross-examination that he having cultivable land and worked as labourer as well who had earning.

20. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue of the respondent moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference made at such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to

have taken into consideration. In paragraph 23 sub-para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very, jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manually work for respondent. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law. Ld. AR/Counsel for the petitioner has contended that termination of petitioner has been made in violation of provisions of Industrial Disputes Act, 1947. The petitioner is liable to be reinstated in service with full back wages. On the other hand Ld. Dy. D.A. has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which criteria to be taken into consideration by Labour Court in awarding compensation has been laid down. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute.

21. I have gone through the judgment relied upon by Ld. Dy. D.A. for respondent and of the view that judgment in Geetam Singh's case of (2013) does not apply to the case in hand in which Hon'ble Apex Court has laid down guidelines and factors to be considered by the Labour Court in cases involving violation of Industrial Disputes Act. In the case in hand before this Court, petitioner had promptly approached unlike in **Geetam Singh's** case when dispute was raised after six years and Hon'ble Apex Court when instead of reinstatement awarded compensation but in the case in hand, demand notice Ex. PW1/F was given after 4 years and one month besides delay was satisfactorily explained by petitioner as PW1. Since the judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)** had different factors particularly on delay in giving demand notice which was after six years, the does not apply in the case in hand. Keeping in view facts and circumstances of case as has come in the evidence petitioner is entitled for reinstatement with other consequential benefits instead of lump sum compensation. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his demand notice *i.e.* 18-5-2010 **except back wages** besides that respondent shall pay Rs. 5000/- to the petitioner as litigation costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 106/2016

Date of Institution : 04-03-2016

Date of Decision : 19-08-2017

Shri Om Chand s/o Shri Chhadia, r/o Village Dharehada, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. *. . .Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Dharampur, District Mandi, H.P. *. . .Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether industrial dispute raised by the worker Shri Om Chand s/o Shri Chhadia, r/o Village Dharehada, P.O. Pehad, Teshil Sarkaghat, District Mandi, H.P. before the Executive Engineer, B&R Division H.P.P.W.D., Dharampur, District Mandi, H.P. *vide* demand notice dated 22-1-2013 regarding his alleged illegal termination of service during year, 2001 suffers from delay and laches? If not, Whether termination of service of Shri Om Chand s/o Shri Chhadia, r/o Village Dharehada, P.O. Pehad, Teshil Sarkaghat, District Mandi, H.P. by the Executive Engineer, B&R Division H.P.P.W.D., Dharampur, District Mandi, H.P. during year, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar in the month of July, 1998 where he continued to work upto March, 2003 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2003 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999) and Roshani Devi (4-7-1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 22-1-2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.3282/2015 which had been decided on 30-7-2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of**

H.P. & Ors. reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of March, 2003 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 02/1999 and he intermittently worked upto May, 1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-01-2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 22-1-2013 *qua* his termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?
..OPP.
2. Whether termination of services of the petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No.1 or issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
4. Whether the claim petition is not maintainable in the present form? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* February, 1999 on muster roll basis as Beldar who continued to work till May, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 17 days in the month of February, 1999 and 31 days in May, 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually not worked for more than 240 days and therefore provisions of Section 25-F of the Act is not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days immediately prior to his retrenchment. The petitioner in his affidavit has claimed to have worked till 2001 whereas respondent has repudiated so by stating that petitioner had worked upto May, 1999. The reference received from the appropriate government revealed that the services of petitioner were retrenched in

2001. It seems that respondent/department did not prepare mandays chart correctly moreso when the reference itself showed the retrenchment in 2001. As such, coupled with the testimony of petitioner and other evidence on record, this court left with no option but to hold that petitioner had worked upto 1999 and retrenched in the year 2001.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after May, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after May, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 22-1-2013 after about 12 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the

respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-G and 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of May, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various

other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held

to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two months** who was non-skilled worker ageing 53 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 48 days in a year irrespective of fact that demand notice was issued after a period of 12 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 18th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 103/2016

Date of Institution : 04-03-2016

Date of Decision : 19-08-2017

Shri Raj Mal s/o Shri Parma Ram, r/o Village Kushari, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Raj Mal s/o Sh. Parma Ram, r/o Village, Kushari, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi H.P. from 12/2002 by the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P., who has worked as Beldar on daily wages basis during the year 1/1999 to 12/2002, and has raised his industrial dispute *vide* demand notice dated 2-12-2013 after delay of more than 10 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during year 1/1999 to 12/2002 and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster-roll as Beldar in the month of January, 1999 where he continued to work upto December, 2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2002 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is

alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2002 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1-8-1998), Shashi Pal (6-4-1999) and Roshani Devi (4-7-1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 02-12-2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20-12-2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of December, 2002 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and he intermittently worked upto 02/2002. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division

Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09-01-2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent from 12/2002 and raised his industrial dispute *vide* demand notice dated 02-12-2013 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of December, 2002 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this,

petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* January, 1999 on musterroll basis as Beldar who continued to work till December, 2002 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 355 days in the year 1999, 325 ½ days in 2000, 341 ½ days in 2001 and 36 days in 2002. Although mandays chart Ex. RW1/B relied upon by the respondent revealed that petitioner had factually worked upto February, 2002 whereas claim of the petitioner remains that he had worked till December, 2002. In absence of either evidence led by the petitioner to controvert the allegation of respondent that he had factually worked upto February, 2002, it would be unsafe to hold that petitioner had worked till February, 2002 when his services were allegedly terminated. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2002, petitioner has factually worked for 341 ½ days in 2001 and 36 days in 2002 aggregating to 377 ½ days prior to termination. Perusal of the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1999 till February, 2002 immediately prior to his retrenchment as stated above.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after January, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Perusal of the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 1999 till February, 2002 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment

which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after February, 2002 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 02-12-2013 after about 10 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs.**

Geetam Singh reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of December, 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the

appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **four years** who was non-skilled worker ageing 49 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 1058 days from the year 1999 to 2002 irrespective of fact that demand notice was issued after a period of 10 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 314/2016

Date of Institution : 12-05-2016

Date of Decision : 19-08-2017

Shri Gian Chand s/o Shri Sher Singh, r/o Village Hawani, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Gian Chand s/o Sh. Sher Singh, Village Hawani, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. during 11/1999. by the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as Beldar on daily wages basis and worked only for 100 days from 08/1999 to 11/1999, and has raised his industrial dispute *vide* demand notice dated 26-12-2014 after 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster-roll as Beldar in the month of August, 1999 where he continued to work upto November, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order in the month of November, 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 21-2-2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20-12-2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 8/1999 who intermittently worked upto 11/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent during November, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief: : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of August, 1999 on muster-roll basis as Beldar who continued to work till November, 1999 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 100 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 100 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since August, 1999 till November, 1999 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since August, 1999 till November, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not

initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

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16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which

compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. **Ld. Dy. D.A. for State** has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs. 1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by **Ld. Counsel/Authorized Representative** for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. **Ld. Counsel** representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by **Ld. Counsel, Ld. AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. **Ld. Dy. D.A.** has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, **Ld. Authorized Representative** for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the **Ld. Dy. D.A.** is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex

Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 52 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 100 days in a year irrespective of fact that demand notice was issued after a period of nine years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright.

Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 139/2016

Date of Institution : 17-03-2016

Date of Decision : 19-08-2017

Shri Ramesh Chand s/o Shri Durga Dass, r/o Village Bhatour, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Ramesh Chand s/o Sh. Durga Dass, Vill. Bhatour, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. from 9/2001, who has worked as Beldar on daily wages basis during the year 12/1998 to 8/2001, and has raised his industrial dispute *vide* demand notice dated 5-5-2014 after delay of more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period mentioned above, and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster-roll as Beldar *w.e.f.* December, 1998 where he continued to work upto August, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6-4-1999), Mamta Devi (6-4-2000), Roshani Devi (4-7-1999) and Inder Singh (1-1-2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02-05-2008, Vipin Kumar on 1-7-2008, Lekh Raj on 25-8-2008 and Ruma Devi on 25-5-2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 05-5-2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20-12-2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/2000 who intermittently worked upto 3/2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13-11-2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19-7-2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent from September, 2001 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of September, 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* December, 1998 on muster-roll basis as Beldar who continued to work till August, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6-4-2000), Inder Singh (1-1-2000) and Hans Raj (6-4-2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 342 days in the year 2000, and 54 ½ days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 342 days in 2000 and 54 ½ days in 2001 aggregating to 396 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 2000 till March, 2001 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 2000 till 2001 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that

whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1-8-1998), Shasi Pal (6-4-1999), Roshani Devi (4-7-1999), Mamta Devi (6.4.2000), Inder Singh (1-1-2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23-11-2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27-1-2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 2001 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 05.5.2014 after about 13 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Machenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it

has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 53 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 396½ days from the year 2000 to 2001 irrespective of fact that demand notice was issued after a period of 13 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further

made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 138/2016

Date of Institution : 17-03-2016

Date of Decision : 19-08-2017

Shri Parkash Chand s/o Shri Hari Singh, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Parkash Chand s/o Shri Hari Singh, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 30.11.2009 regarding his alleged illegal termination of service *w.e.f.* 01.01.2000 suffers from delay and latches? If not, Whether termination of the services of Shri Parkash Chand S/O Shri Hari Singh, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.01.2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* January, 1999 where he continued to work upto August, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the month of August, 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20.12.2012

directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of August, 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 who intermittently worked upto 12/2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 30.11.2009 *qua* his termination of service *w.e.f.* 01.01.2000 by the respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent *w.e.f.* 01.01.2000 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue no.2 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged?
..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* January, 1999 on muster roll basis as Beldar who continued to work till 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 218 ½ days in the year 1999, 295 days in 2000 and 205 ½ days in 2001. Moreover, respondent in its reply has admitted in categorical terms that petitioner had worked till December, 2001. As such, retrenchment of petitioner could not be stated to be in consonance with the provisions of Section 25-F of the Act. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 295 days in 2000 and 205 ½ days in 2001 aggregating to 500 ½ days prior to termination. A bare glance at the mandays Chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1999 till December, 2001 immediately prior to his retrenchment as stated above. Perusal of the mandays chart Ex.

RW1/B would reveal petitioner had worked for more than 240 days ever since 1999 till 2001 immediately prior to his retrenchment as stated above.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2001 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 30.11.2009 after about nine years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes

Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab**

Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. *Ld. Dy. D.A.* has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, *Id. Authorized Representative* for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the *Id. Dy. D.A.* is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 45 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 719 days from the year 1999 to 2001 irrespective of fact that demand notice was issued after a period of 09 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 135/2016

Date of Institution : 17-03-2016

Date of Decision : 19-08-2017

Shri Beas Dev s/o Shri Nand Lal, r/o Village Banar Kalan, P.O. Dharampur,
Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Beas Dev s/o Sh. Nand Lal r/o Village Banar Kalan, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. from 8/1998 by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. who had worked as beldar on daily wages basis during the year 7/1998 to 8/1998, respectively and has raised his industrial dispute *vide* demand notice dated 19.5.2013 after more than 14 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 7/1998 to 8/1998 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar in the month of July, 1998 where he continued to work upto August, 1998 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* 8/1998 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been

retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 8/1998 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 04/1998 who intermittently worked upto 08/1998. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers in the year February, 2004 and July, 2005 and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent from August, 1998 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPP.*
4. Whether claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . *OPP.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Yes

Relief. : Petition is partly allowed awarding compensation of Rs.55,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 And 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of August, 1998 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of July, 1998 on muster roll basis as Beldar who continued to work till August, 1998 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999),

Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 104 days in the year 1998. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 104 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in August, 1998 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after August, 1998 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without

earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in any type of job and cross-examination of PW1 reveals that he had not been engaged in cultivation of his land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on August, 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903**

Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. **Ld. Dy. D.A.** has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, **Id. Authorized Representative** for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the **Id. Dy. D.A.** is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer

besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 38 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 104 days in a year irrespective of fact that demand notice was issued after a period of fourteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs. 55,000/- (Rupees fifty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues Nos. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.55,000/- (Rupees fifty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SH K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 105/2016

Date of Institution : 04-03-2016

Date of Decision : 19-08-2017

Shri Manohar Lal s/o Shri Nanak Chand, r/o Village Jhajar Kukain, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer B&R Division H.P.P.W.D., Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Manohar Lal s/o Shri Nanak Chand, r/o Village Jhajar Kukain, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, B&R Division, H.P.P.W.D., Dharampur, District Mandi, H.P. *vide* demand notice dated 13.3.2014 regarding his alleged illegal termination of service during December, 2001 suffers from delay and latches? If not, Whether termination of the services of Shri Manohar Lal s/o Shri Nanak Chand, r/o Village Jhajar Kukain, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D., Dharampur, District Mandi, H.P. during December, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* 15.4.1999 where he continued to work upto December, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers

who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 13.3.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.3284/2015 which had been decided on 30.7.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* December, 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 2/1999 and that he intermittently worked upto 11/1999. It is denied that petitioner had worked with the respondent/department upto 12/2001. It is alleged that petitioner had left the job of his own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of his claim. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09.01.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 13.3.2014 *qua* his termination of service during December, 2001 by respondent suffers from the vice of delay and laches as alleged? . .*OPP.*
2. Whether termination of services of the petitioner by the respondent during December, 2001 is/was illegal and unjustified as alleged? . .*OPP.*
3. If issue no.1 of issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the Month of April, 1999 on muster roll basis as Beldar who

continued to work till December, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 168 days in the year 1999 and 147 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 147 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S.**

Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in any type of job and cross-examination of PW1 reveals that he had not been engaged in cultivation of his land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25- H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay

in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. **Ld. Dy. D.A.** has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, **Id. Authorized Representative** for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the **Id. Dy. D.A.** is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by

respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two year** who was non-skilled worker ageing 44 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 315 days in two years irrespective of fact that demand notice was issued after a period of thirteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues Nos. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 102/2016

Date of Institution : 04-03-2016

Date of Decision : 19-08-2017

Shri Raj Kumar s/o Shri Parma Nand, r/o VPO Bradta, Tehsil Sarkaghat, District Mandi,
H.P. *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District
Mandi, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Raj Kumar s/o Shri Parma Nand, r/o V.P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *vide* demand notice dated 22-05-2009 regarding alleged illegal termination of his services during year, 2000 suffers from delay and laches? If not, Whether termination of services of Shri Raj Kumar s/o Shri Parma Nand, r/o V.P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during year, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* 18.5.1998 where he continued to work upto 31.3.2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers

who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 22.5.2009 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.3562/2015 which had been decided on 27.8.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of March, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 05/1998 and he intermittently worked upto 12/1999. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09.1.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 22.5.2009 *qua* his termination of service during year, 2000 by the respondent suffers from the *vice* of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during year, 2000 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No.1 or issue No.2 or both are proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2000 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* May, 1998 on muster roll basis as Beldar who continued to

work till December, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 173 days in the year 1998 and 223 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 173 days in 1998 and 223 days in 1999 aggregating to 396 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till December, 1999 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 1998 till 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner

he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 22.5.2009 after about nine years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of

Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the year 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs.**

State of Rajasthan in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 47 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 396 days from the year 1998 to 1999 irrespective of fact that demand notice was issued after a period of 09 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. Sharma),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 104/2016

Date of Institution : 04-03-2016

Date of Decision : 19-08-2017

Shri Balbir Sharma s/o Shri Braham Dass, r/o Village Masdhuwan, P.O. Brarta, Tehsil Sarkaghat, District Mandi, H.P. . . . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Balbir Sharma s/o Sh. Braham Dass, Village Masdhuwan, P.O. Brarta Tehsil Sarkaghat, Distt. Mandi H.P. from 11/1998 by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P., who had worked as beldar on daily wages basis from 11/1998 to 12/2000, respectively and has raised his industrial dispute *vide* demand notice date 6/01/2014 after more than 13 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 11/1998 to 12/2000 and delay of more than 13 years in raising the industrial dispute, what amount

of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar in the month of November, 1998 where he continued to work upto December, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2001 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 06.01.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* December, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 9/1998 and that he intermittently worked upto 11/2000. It is denied that petitioner had worked with the respondent/department upto 12/2000. It is alleged that petitioner had left the job of his own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of his claim. It is alleged that petitioner had left the job of his own

sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.7.2017 for determination:

1. Whether termination of services of petitioner by the respondent from December, 2000 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether claim petition suffers from the *vice* of delay and laches as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2000 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the of November, 1998 on muster roll basis as Beldar who continued to work till December, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 74 days in the year 1998, 285 days in 1999 and 117 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner has factually worked for 117 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of

petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in any type of job and cross-examination of PW1 reveals that he had not been engaged in cultivation of his land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25- H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years..

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for

past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it

was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 36 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 430 days in three years irrespective of fact that demand notice was issued after a period of thirteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.85,000/- (Rupees eighty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 01/2016

Date of Institution : 01-01-2016

Date of Decision : 19-08-2017

Shri Ramesh Kumar s/o Shri Raghu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Ramesh Kumar s/o Shri Raghu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D., Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. vide demand notice dated 22-01-2013 regarding his alleged illegal termination of services during year, 2001 suffers from delay and latches? If not, Whether termination of services of Shri Ramesh Kumar s/o Shri Raghu Ram, r/o Village Didnu, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D., Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during year, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not,

what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar in the month of November, 1998 where he continued to work upto 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner he raised industrial dispute *vide* demand notice dated 22.01.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 and he intermittently worked upto 09/2000. It is alleged that petitioner has left the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at his own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of

termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 22-01-2013 *qua* his termination of service during year, 2001 by respondent suffers from the *vice* of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of September, 2000 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent w.e.f. November, 1998 on muster roll basis as Beldar who continued to work till September, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 51 days in the year 1998, 330 ½ days in 1999 and 241 ½ days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 330½ days in 1999 and 241½ days in 2000 aggregating to 571 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till September, 2000 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 1998 till September, 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after January, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were

engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1998 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 2000 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 22.1.2013 after about 12 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely

worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. **Ld. Dy. D.A. for State** has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by **ld. counsel/Authorized Representative** for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. **Ld. counsel** representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by **ld. Counsel, ld. AR** for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. **Ld. Dy. D.A.** has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another. Relying upon** the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, **ld. Authorized Representative** for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the **ld. Dy. D.A.** is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of

such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 47 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 623 days from the year 1998 to 2000 irrespective of fact that demand notice was issued after a period of 12 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.85,000/- (Rupees eighty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being

not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. Sharma),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 726/2016

Date of Institution : 06-10-2016

Date of Decision : 19-08-2017

Shri Prabh Dyal s/o Shri Ghungar Ram, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)

2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Prabh Dyal s/o Sh. Ghungar Ram Vill. Kapahi, PO Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. during 8/2000 by (1) The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. who had worked as beldar on daily wages basis during the 7/1998 to 8/2000, only for 653 days, and has raised his industrial dispute *vide* demand notice dated 25.5.2015 after more than 14 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* July, 1998 where he continued to work upto August, 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 25.5.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2000 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 7/1998 who intermittently worked upto 8/2000. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during August, 2000 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the *vice* of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.90,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of August, 2000 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* July, 1998 on muster roll basis as Beldar who continued to work till August, 2000 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 135 days in the year 1998, 318 days in 1999 and 200 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 318 days in 1999 and 200 days in 2000 aggregating to 518 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1998 till August, 2000 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 1998 till 2000 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2000. No reason

whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after August, 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 25.5.2015 after about 14 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of August, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it

has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 46 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 653 days from the year 1998 to 2000 irrespective of fact that demand notice was issued after a period of 14 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.90,000/- (Rupees ninety thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that

amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 722/2016

Date of Institution : 06-10-2016

Date of Decision : 19-08-2017

Smt. Balo Devi w/o Shri Shali Ram, r/o Village Putli Falehad, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, US Club, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
.. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Balo Devi w/o Sh. Shali Ram Vill. Putli Falehad, PO Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. during 3/1999 by the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2 (2) the Executive Engineer, HPPWD, -Division Dharampur, Distt. Mandi, H.P. who had worked as Beldar on daily wages basis from 12/1998 to 3/1999 only for 101 days, and has raised her industrial dispute *vide* demand notice dated 15.9.2014 after 14 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay or more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of December, 1998 where she continued to work upto March, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* 3/1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of

H.P. by filing CWP No. 8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 3/1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 12/1998 who intermittently worked upto 03/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent from March, 1999 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

4. Whether claim petition suffers from the *vice* of delay and laches as alleged. If so, its effect? . . . OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of March, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of December, 1998 on muster roll basis as beldar who continued to work till March, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25- G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 29 days in the year 1998 and 72 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 72 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not

issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in March, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

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and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

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17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. *Ld. Dy. D.A.* has representing *State/respondents* has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, *Ld. Authorized Representative* for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the *Ld. Dy. D.A.* is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 40 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 101 days in two years

irrespective of fact that demand notice was issued after a period of fourteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 02/2016

Date of Institution : 01-01-2016

Date of Decision : 19-08-2017

Smt. Babli Devi w/o Shri Sohan Singh, r/o Village Banjal, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Babli Devi w/o Shri Sohan Singh, r/o Village Banjal, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D., Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *vide* demand notice dated 19-02-2013 regarding her alleged illegal termination of services during year, 2001 suffers from delay and laches? If not, Whether termination of services of Smt. Babli Devi w/o Shri Sohan Singh, R/O Village Banjal, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D., Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during year, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* 13.1.1999 where she continued to work upto the year 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2001 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act.

Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 19.2.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.3617/2015 which had been decided on 02.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2001 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 and that she intermittently worked upto 10/1999. It is denied that petitioner had worked with the respondent/department upto 2001. It is alleged that petitioner had left the job of her own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of her claim. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.07.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 19.02.2013 *qua* her termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .OPP.

2. Whether termination of the services of petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2001 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the of January, 1999 on muster roll basis as Beldar who continued to work till the year 2001 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked only for 227 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 227 days and not 240 days and therefore provisions of Section 25-F of the

Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. The petitioner in her affidavit has claimed to have worked till 2001 whereas respondent has repudiated so by stating that petitioner had worked upto October, 1999. The reference received from the appropriate government revealed that the services of petitioner were retrenched in 2001. It seems that respondent/department did not prepare mandays chart correctly moreso when the reference itself showed the retrenchment in 2001. As such, coupled with the testimony of petitioner and other evidence on record, this court left with no option but to hold that petitioner had worked upto October, 1999 and retrenched in the year 2001.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 2000 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her

termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-G and 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not

applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 48 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 227 days in a year irrespective of fact that demand notice was issued after a period of twelve years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 47/2016

Date of Institution : 20-02-2016

Date of Decision : 19-08-2017

Smt. Neela Devi w/o Shri Hem Singh, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat,
District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Neela Devi w/o Shri Hem Singh, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H. P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. *vide* demand notice dated 16-08-2010 regarding alleged illegal termination of her services during year, 2001 suffers from delay and laches? If not, Whether termination of services of Smt. Neela Devi w/o Shri Hem Singh, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. year, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* 01.01.1999 where she continued to work upto 31.12.2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2000 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2000 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers

who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 16.8.2010 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.4311/2015 which had been decided on 16.11.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the month of December, 2000 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 01/1999 and she intermittently worked upto 12/1999. It is alleged that petitioner has left the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09.01.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 16.8.2010 *qua* her termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No.1 or issue No.2 or both are proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of December, 2000 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* January, 1999 on muster roll basis as Beldar who

continued to work till December, 2000 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 307 days in 1999. Even if we look at the mandays chart, it would show that immediately preceding her termination in 2000, petitioner has factually worked for 307 days in 1999 days prior to termination. Perusal of mandays chart Ex. RW1/B also reveals that petitioner had worked for more than 240 days ever since January, 1999 till December, 1999 immediately prior to her retrenchment as stated above. The petitioner in her affidavit has claimed to have worked till 2001 whereas respondent has repudiated so by stating that petitioner had worked upto December, 1999. The reference received from the appropriate government revealed that the services of petitioner were retrenched in 2001. It seems that respondent/department did not prepare mandays chart correctly moreso when the reference itself showed the retrenchment in 2001. As such, coupled with the testimony of petitioner and other evidence on record, this court left with no option but to hold that petitioner had worked upto 1999 and retrenched in the year 2001.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter calling upon her to resume duty. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 1999. No reason whatsoever has been assigned for such any inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent *qua* plea of abandonment which has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged, petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which manifestly violates provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination also reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in the year 2000 and thereafter several workers were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002

provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after the year 2000 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 16.8.2010 after about 09 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in government job and cross-examination of PW1 reveals that she had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this

judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was

submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 38 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 307 days from January, 1999 to December, 1999 irrespective of fact that demand notice was issued after a period of 09 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump- sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded

shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room. Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 23/2016
Date of Institution : 20-01-2016
Date of Decision : 19-08-2017

Smt. Vyasa Devi w/o Shri Bidhi Chand, r/o Village Balhada, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Smt. Vyasa Devi w/o Shri Bidhi Chand, r/o Village Balhada, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. before the

Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 29.1.2013 regarding her alleged illegal termination of service during year, 2002 suffers from delay and laches? If not, Whether termination of the services of Smt. Vyasa Devi w/o Shri Bidhi Chand, r/o Village Balhada, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. during year, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar *w.e.f.* 14.11.1998 where she continued to work upto the year 2002 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 2002 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. It further transpires from between 2002 to 2005, respondent/department had terminated the services of more than 2000 daily waged workers who were engaged by the respondent in Dharampur Division from time to time without any purposes. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999) and Roshani Devi (4.7.1999) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 29.01.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.3614/2015 which had been decided on 01.9.2015 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 2002 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 11/1998 and that she intermittently worked upto 3/1999. It is denied that petitioner had worked with the respondent/department upto 2000. It is alleged that petitioner

had left the job of her own who had not even completed 240 days in each calendar year. The plea of respondent remained that petitioner had abandoned the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal termination by respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute creating doubt on genuineness of her claim. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent and therefore alleges that question of termination of the services of petitioner by the respondent did not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.07.2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 29.01.2013 *qua* her termination of service during year, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during year, 2002 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the year 2002 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the November, 1998 on muster roll basis as Beldar who continued to work till the year 2002 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 43 days in the year 1999 and 84 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 127 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. The petitioner in her affidavit has claimed to have worked till 2002 whereas respondent has repudiated so by stating that petitioner had worked upto March, 1999. The reference received from the appropriate government revealed that the services of petitioner were retrenched in 2002. It seems that respondent/department did not prepare mandays chart correctly moreso when the reference itself showed the retrenchment in 2002. As such, coupled with the testimony of petitioner and other evidence on record, this court left with no option but to hold that petitioner had worked upto 1999 and retrenched in the year 2002.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter calling upon her to resume duty. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken

by the respondent *qua* plea of abandonment which has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in Para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Sections 25-F and 25-G of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and**

Ors., in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference

could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to Para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 48 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 127 days in a year irrespective of fact that demand notice was issued after a period of eleven years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No.4 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 296/2015

Date of Institution : 13-7-2015

Date of decision : 28-8-2017

Shri Bablu Ram s/o Shri Nokhu Ram, r/o Village Nagdyara, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. *.Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. *.Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dinesh Singh, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bablu Ram s/o Shri Nokhu Ram, r/o Village Nagdyara, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. during August, 1998 to August, 2014 by the Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as Beldar *w.e.f.* August, 1998 but the department with malafide intention and ulterior motive did not allow the petitioner to complete 240 days in each calendar year and finally disengaged the services of petitioner in August, 2014. The grievance of petitioner remains that the respondent had given fictional breaks to petitioner with a view that petitioner did not allow to take the benefit of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). Not only this, the services of petitioner had been terminated *w.e.f.* February, 2014 as such respondent had violated the provisions of Section 25-F, 25-G and 25-H of the Act however junior persons namely Lov Kumar, Nirmla Devi, Jagdish Chand, Gojru Ram etc. were in continuous service. It is also alleged that giving of fictional breaks to petitioner is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Chapter V-A of the Act. Accordingly, petitioner seeks relief to the extent that re-engagement in service and fictional breaks illegally given to him be treated and counted as period of continuity in service with all consequential benefits in the interest of justice.

4. The respondent resisted claim petition, filed reply taken preliminary objections of maintainability. It is stated that Environment Department of respondent State is not an industry under Section 2 (j) of the Industrial Disputes Act. On merits admitted that petitioner was initially engaged as Beldar in forest department on August, 1998 and denied that the services of petitioner had not been disengaged in February, 2014. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was primarily seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any preceding calendar year. It is further denied that no persons junior to the petitioner had been given continuous service in place of engagement of petitioner. It is alleged that petitioner was an intermittent worker who had absented from duty during the course of her engagement and he used to report for duty per own convenience and sweet will which is clear from the notice served upon to him during the months of 12/2011 and 8/2012 *vide* which petitioner had been asked to report for duty but of no avail. It is stated that Love Kumar s/o Beli Ram was engaged on 1.2.1998 and his services had

been regularized as Forest Worker *vide* order of this Court/Tribunal. It is further stated that Nirmla Devi w/o Sh. Roop Lal was engaged on 1.3.2000 as per policy of compassionate ground at Dharampur range after taken approval of the competent authority and she is working with the respondent/department till now as daily wager however Jagdish Chand was engaged in Kamlah Forest Range as well as Gojru Ram is also working with the respondent/department till now on daily wage basis so question of violation of provisions of Sections 25-F, 25-G and 25-H of the Industrial Dispute Act, does not arise. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is alleged that Forest Department is not an industry and labour law does not apply on government departments. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works, the same did not constitute unfair labour practice rather petitioner engaged herself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Shri Trilok Nath, Sr. Assistant, D.F.O. Joginder Nagar had examined as PW2 tendered/proved seniority list Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, copies of notices dated 13.12.2011, 25.7.2012, 18.12.2009 Ex. RW1/C to Ex. RW1/E, copy of postal receipts (10 receipts) Ex. RW1/F, copy of Award dated 13.1.2005 Ex. RW1/G, Mandays of Luv Kumar Ex. RW1/H, copy of Annexure R-IX Ex. RW1/I, copy of order dated 5.7.2000 Ex. RW1/J, copy of mandays chart of Shri Jagdish Chand Ex. RW1/K and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 20.04.2016 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during August, 1998 to August, 2014 is/was illegal and unjustified as alleged?
..OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged?
..OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly with the respondent. It is also stated that the fictional breaks had been given by respondent intermittently with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from the initial engagement till date of retrenchment, petitioner could not complete 240 days besides further denied that respondent department had engaged any junior to petitioner.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of August, 1998 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing petitioner to have worked for 123 days in the year 2015, 56 days in 2014, 150 days in 2013, 120 days in 2012, 59 days in 2011, 140 in 2010, 142 days in 2009, 142 days in 2008, 117 days in 2007, 111 days in 2006, 122 days in 2005, 132 days in 2004, 72 days in 2003, 38 days in 2002, 123 days in 2001, 36 days in 2000, 29 days in 1999 and 20 days in 1998. Ex. PW2/A is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016 which shows the name of petitioner figured at serial No.21 and is shown to have joined on 10.8.1998. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent as such plea of complete disengagement as alleged did not arise. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily remains that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of August, 1998. This fact find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 123 days in the year 2015, 56 days in 2014, 150 days in 2013, 120 days in 2012, 59 days in 2011, 140 days in 2010, 142 days in 2009, 142 days in 2008, 117 days in 2007, 111 days in 2006, 122 days in 2005, 132 days in 2004, 72 days in 2003, 38 days in 2002, 123 days in 2001, 36 days in 2000, 29 days in 1999 and 20 days in 1998 and therefore when petitioner had served respondent for more than 150 days in several calendar years. As per mandays chart, it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly appears to

have been made in order to escape liability for regularizing services of petitioner by alleging that forestry work was seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal as required under the law.

14. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It is admitted case of the parties that while engaging petitioner no appointment letter was given. While working even for some months, muster rolls were not at all issued. The mandays chart Ex. RW1/B reveals that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason besides no letter or notice whatsoever had been issued by respondent *qua* non-attendance of petitioner and as such the case of petitioner having been given fictional breaks cannot be disbelieved. It may be noticed that no muster roll were issued for whole month during service as can be seen from Ex. RW1/B which further strengthens plea of petitioner on the point of respondent working in arbitrary manner. In view of foregoing evidence on record, it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1998 to 2014 which is an unfair labour practice within the meaning of Industrial Disputes Act and said fictional break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act. Another aspect of this case is that petitioner has claimed to have been finally disengaged in the month of February, 2014 but reference so received from government only relates to time to time termination. As such this Court is confine findings relating to time to time termination and not final termination. Moreover, petitioner as PW1 in cross-examination has admitted that on the date of his examination before this Court on 24.5.2016 petitioner was employed with respondent/department. As such, it cannot be stated that the services of petitioner was finally terminated/disengaged in February, 2014 as alleged in para No.2 of claim petition.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Jagdish was junior to petitioner who was retained in service leading to inference that while retrenching petitioner, junior workmen were allowed to be retained in service which showed arbitrariness and whimsical manner in which petitioner was disengaged, ignoring his seniority. As said Jagdish figured at serial No. 32 of seniority list Ex. PW2/A who admittedly junior to the petitioner per contents of Ex. PW2/A which is the seniority list of daily wagers of Joginder Nagar Forest Division. Respondent as (RW1) on oath has also admitted this fact. RW1 also admitted in cross-examination that the work which was assigned to said Jagdish who had been engaged on 15.1.2000 was junior to petitioner now his services had been regularized by the respondent/department however the same type of work was assigned to petitioner as was done by aforesaid junior. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence. *Ld.*

AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 are decided accordingly.

Issue No.3:

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Relief:

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 307/2015

Date of Institution : 16-7-2015

Date of decision : 28-8-2017

Smt. Gita Devi w/o Shri Rajender Kumar, r/o Village Matkehar, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Gita Devi w/o Shri Rajender Kumar, r/o Village Matkehar, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. during August, 1998 to August, 2014, by the Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as Beldar *w.e.f.* August, 1998 but the department with malafide intention and ulterior motive did not allow the petitioner to complete 240 days in each calendar year and finally disengaged the services of petitioner in the month of February, 2014. The grievance of petitioner remains that the respondent had given fictional breaks to petitioner with a view that petitioner did not allow to take the benefit of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). Not only this, the services of petitioner had been terminated *w.e.f.* February, 2014 as such respondent had violated the provisions of Section 25-F, 25-G and 25-H of the Act however junior persons namely Lov Kumar, Nirmla Devi, Jagdish Chand, Gojru Ram etc. were in continuous service. It is also alleged that giving of fictional breaks to petitioner was illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Chapter V-A of the Act. Accordingly, petitioner seeks relief to the extent that re-engagement in service and fictional breaks illegally

given to her be treated as well as counted as period of continuity in service with all consequential benefits in the interest of justice.

4. The respondent resisted claim petition, filed reply taken preliminary objection of maintainability. It is stated that Environment Department of respondent State is not an industry under Section 2(j) of the Industrial Disputes Act. On merits admitted that petitioner was initially engaged as Beldar in forest department on August, 1998 and denied that the services of petitioner had not been disengaged in February, 2014. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was primarily seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although she had not completed 240 days of work so far in any preceding calendar year. It is further denied that no persons junior to the petitioner had been given continuous service in place of engagement of petitioner. It is alleged that petitioner was an intermittent worker who had absented from duty during the course of her engagement and used to report for duty per own convenience and sweet will which is clear from the notice served upon to her during the months of 12/2011 and 8/2012 *vide* which petitioner had been asked to report for duty but of no avail. It is stated that Love Kumar s/o Beli Ram was engaged on 1.2.1998 and her services had been regularized as Forest Worker *vide* order of this Court/Tribunal. It is further stated that Nirmla Devi w/o Sh. Roop Lal was engaged on 1.3.2000 as per policy of compassionate ground at Dharampur range after taken approval of the competent authority and she is working with the respondent/department till now as daily wager however Jagdish Chand was engaged in Kamlah Forest Range as well as Gojru Ram is also working with the respondent/department till now on daily wage basis so question of violation of provisions of Sections 25-F, 25-G and 25-H of the Industrial Dispute Act, does not arise. It is emphatically denied that any fictional break was given to petitioner with the object that she could not get the benefit of the provisions of Section 25-B of the Act. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is alleged that Forest Department is not an industry and labour law does not apply on government departments. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works, the same did not constitute unfair labour practice rather petitioner engaged herself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Shri Trilok Nath, Sr. Assistant, D.F.O. Joginder Nagar had examined as PW2 tendered/proved seniority list Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, copies of notices dated 13.12.2011, 25.7.2012, 18.12.2009 Ex. RW1/C to Ex. RW1/E, copy of postal receipts (10 receipts) Ex. RW1/F, copy of Award dated 13.1.2005 Ex. RW1/G, Mandays of Luv Kumar Ex. RW1/H, copy of Annexure R-IX Ex. RW1/I, copy of order dated 5.7.2000 Ex. RW1/J, copy of mandays chart of Shri Jagdish Chand Ex. RW1/K and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 20.04.2016 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during August, 1998 to August, 2014 is/was illegal and unjustified as alleged?
.. *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
.. *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged?
.. *OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1 and 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in her affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which she was engaged and continued to work uninterruptedly with the respondent. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from the initial engagement till date of retrenchment, petitioner could not complete 240 days besides further denied that respondent department had not engaged any junior to him.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that she had been appointed in the month of August, 1998 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing petitioner to have worked for 49 days in the year 2015, 51 days in 2014, 146 days in 2013, 69 days in 2012, 120 days in 2011, 121 days in 2010, 138 days in 2009, 105 days in 2008, 73 days in 2007, 131 days in 2006, 97 days in 2005, 12 days in 2004, 74 days in 2003, 23 days in 2002, 38 days in 2001, 73 days in 2000, 93 days in 1999 and 07 days in 1998. Ex. PW2/A is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016 which shows the name of petitioner figured at serial No.22 who had joined on 21.8.1998. Cross-examination of petitioner as PW1 reveals that she was still employed with the respondent as such question of finally disengagement from service did not arise. She has although admitted that department/respondent

had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily remains that she had been given fictional breaks and that persons who were junior to her were retained ignored her seniority and she was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of August, 1998. This fact finds supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 49 days in the year 2015, 51 days in 2014, 146 days in 2013, 69 days in 2012, 120 days in 2011, 121 days in 2010, 138 days in 2009, 105 days in 2008, 73 days in 2007, 131 days in 2006, 97 days in 2005, 12 days in 2004, 74 days in 2003, 23 days in 2002, 38 days in 2001, 73 days in 2000, 93 days in 1999 and 07 days in 1998 and therefore when petitioner had served respondent for more than 150 days in several calendar years. As per mandays chart, it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly appears to have been made in order to escape liability qua regularization of petitioner by alleging that forestry work was seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal as required under the law.

14. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when she had absented from duty calling upon her to resume duty or explain the cause for her unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when she absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It is admitted case of the parties that while engaging petitioner, no appointment letter was given. While working even for some months, muster rolls were not at all issued. The mandays chart Ex. RW1/B reveals that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason besides no letter or notice whatsoever had been issued by respondent *qua* non-attendance of petitioner and as such the case of petitioner having been given fictional breaks cannot be disbelieved. It may be noticed that no muster roll were issued for whole month during service as can be seen from Ex. RW1/B which further strengthens plea of petitioner on the point of respondent working in arbitrary manner. In view of foregoing evidence on record, it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1998 to 2014 which is an unfair labour practice within the meaning of Industrial Disputes Act and said fictional break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act. Another aspect of this case is that petitioner has claimed to have been finally disengaged in the month of February, 2014 but reference so received from government only relates to time to time termination. As such this Court is confine findings relating to time to time termination and not final termination. Moreover, petitioner as PW1 in cross-examination has admitted that on the date of her examination before this Court on 24.5.2016 petitioner was employed with respondent/department.

As such, it cannot be stated that the services of petitioner was finally terminated/disengaged in February, 2014 as alleged in para No.2 of claim petition.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Jagdish was junior to petitioner who was retained in service leading to inference that while retrenching petitioner, junior workmen were allowed to be retained in service which showed arbitrariness and whimsical manner in which petitioner was disengaged ignoring her seniority. As said Jagdish is figured at serial No. 32 of seniority list Ex. PW2/A who admittedly junior to the petitioner per contents of Ex. PW2/A which is the seniority list of daily wagers of Joginder Nagar Forest Division. Respondent as (RW1) on oath has also admitted this fact. RW1 also admitted in cross-examination that the work which was assigned to Jagdish who had been engaged on 15.1.2000 was junior to petitioner now his services had been regularized by the respondent/department however the same type of work was assigned to petitioner as was done by aforesaid junior. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks as has come in evidence. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which she could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner herself has not discharged initial onus qua remaining unemployed during break period, so she cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 are decided accordingly.

Issue No.3 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in her services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that she did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Relief:

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her

initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 308/2015

Date of Institution : 16-7-2015

Date of decision : 28-8-2017

Shri Nag Rana s/o Shri Shyam Singh, r/o Village Pando, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. *.Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. *.Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nag Rana s/o Shri Shyam Singh, r/o Village Pando, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. during November, 2006 to August, 2014 by the Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as Beldar *w.e.f.* November, 2006 but the department with malafide intention and ulterior motive did not allow the petitioner to complete 240 days in each calendar year. The grievance of petitioner remains that the respondent had given fictional breaks to petitioner with a view that petitioner did not allow to take the benefit of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). It is alleged that breaks had been given to the petitioner by the respondent who had violated the provisions of Section 25-F, 25-G and 25-H of the Act. It is alleged that respondent/department had regularized the persons junior to petitioner which was unfair labour practice as envisaged under Section 2(r) (a) of the Industrial Dispute Act. It is also alleged that giving of fictional breaks to petitioner is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Chapter V-A of the Act. Accordingly, petitioner seeks relief to the extent that re-engagement in service and fictional breaks illegally given to him be treated and counted as period of continuity in service with all consequential benefits in the interest of justice.

4. The respondent resisted claim petition, filed reply *inter-alia* taken preliminary objections of maintainability. It is stated that Environment Department of respondent State is not an industry under Section 2(j) of the Industrial Disputes Act. On merits admitted that petitioner was initially engaged as beldar in forest department in the month of November, 2006 and denied the facts that the services of petitioner had been terminated in the month of August, 2014. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was primarily seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. It is claimed that petitioner was an intermittent worker and absented from duty during course of his engagement and used to report for duty per own convenience and sweet will as such the same was clear from the notice served upon petitioner during the month of 12/2011, 8/2012 and 1/2013 *vide* which petitioner had been called for duty but of no avail. It is denied that respondent/department had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. It is contended that work was provided to petitioner as and when it was available with the department. It is alleged that no person junior to petitioner had been regularized by the respondent/department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works, the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Shri Trilok Nath, Sr. Assistant, D.F.O. Joginder Nagar had examined as PW2 tendered/proved seniority list Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, copies of notices dated 13.12.2011 and 25.7.2012 Ex. RW1/C to Ex. RW1/D, copy of postal receipts (11 receipts) Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 20.04.2016 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during August, 1998 to August, 2014 is/was illegal and unjustified as alleged?
..OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged?
..OPR.

Relief:

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly with the respondent. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of

work for the purpose of continuous service and that due to fictional breaks from the initial engagement till date of retrenchment, petitioner could not complete 240 days besides further denied that respondent department had not engaged any junior to him.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of November, 2006 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing petitioner to have worked for 156 days in the year 2015, 61 days in 2014, 77 days in 2013, 55 days in 2012, 104 days in 2011, 110 days in 2010, 226 days in 2009, 104 days in 2008, 150 days in 2007 and 24 days in 2006. Ex. PW2/A is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30.11.2016 which shows the name of petitioner figured at serial No.68 is shown to have joined on 15.11.2006. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily remains that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of November, 2006. This fact finds supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 123 days in the year 156 days in the year 2015, 61 days in 2014, 77 days in 2013, 55 days in 2012, 104 days in 2011, 110 days in 2010, 226 days in 2009, 104 days in 2008, 150 days in 2007 and 24 days in 2006 and therefore petitioner had served respondent for more than 200 days in several calendar years as stated above. As per mandays chart, it could not be safely construed that petitioner was not a seasonal worker instead the plea so raised by respondent manifestly appears to have been made in order to escape liability for regularizing petitioner in service by alleging that forestry work was seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal as required under the law.

14. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It is admitted case of the parties that while engaging petitioner no appointment letter was given. While working even in some months, muster rolls were not at all issued. The mandays chart Ex. RW1/B reveals that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason besides no letter or notice whatsoever had been issued by respondent *qua* non-attendance of petitioner and as such the case of petitioner having been

given fictional breaks cannot be disbelieved. It may be noticed that no muster roll were issued for whole month during service as can be seen from Ex. RW1/B which further strengthens plea of petitioner on the point of respondent working in arbitrary manner. In view of foregoing evidence on record, it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2006 to 2014 which is an unfair labour practice within the meaning of Industrial Disputes Act and said fictional break period has to be counted for the purposes of 'continuous service' envisaged under Section 25-B of the Act.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that were junior to petitioner who were retained in service leading to inference that while retrenching petitioner, junior workmen were allowed to be retained in service which showed arbitrariness and whimsical manner in which petitioner was disengaged ignoring his seniority. If mandays chart Ex. RW1/B is perused, the same shows fictional breaks having been given to the petitioner in the month of December, 2010 by respondent/department whereas seniority Ex. PW2/A shows that person figured at serial No.103 namely Ram Lal s/o Shri Bidhi Chand was engaged on 01.12.2010 however respondent/department had not assigned the work to petitioner which clearly shows that respondent had given fictional breaks to the petitioner in the month December, 2010. The seniority list Ex. PW2/A further shows that person mentioned at serial No.116 namely Jagdish Chand s/o Tek Chand was also engaged in the month of May, 2012 but respondent/department had been given fictional breaks to the petitioner in that month too which was also clear cut violation of provisions of Section 25-H of the Industrial Disputes Act. As such, respondent is held to have violated provisions of Section 25-H of the Act and held to have not been followed procedure laid down under Industrial Disputes Act by respondent.

17. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G and H of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the specific provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks to petitioner from time to time which is primarily illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus *qua* remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 are decided accordingly.

Issue No.3 :

18. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days,

the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Relief:

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 322/2015

Date of Institution : 21-7-2015

Date of Decision : 28-8-2017

Smt. Bhagi Devi d/o Shri Surdev, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Bhagi Devi d/o Shri Surdev, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received on 08.05.2012 regarding her alleged illegal termination of services during August, 2003 suffers from delay and laches? If not, Whether termination of the services of Smt. Bhagi Devi d/o Shri Surdev, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1998 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Parkash Chand who appointed in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2004. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-

F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2008 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1998 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D, copy of notice Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D. A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during August, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during August, 2003 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1998 continuously worked till August, 2003 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to

have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1998 to August, 2003. she has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/ department after terminating her services in August, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 43 days in the year 1998, 30 days in 2002 and 90 days in 2003 and thus a total of her service in 1998 to 2003 in 03 years she had worked for 163 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 90 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 30.5.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 03 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in August, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was

not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has

resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the

power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Ld. Counsel* for petitioner, *Ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by *Ld. Dy. D.A.* for the State, *Ld. Counsel* for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered

in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra*,** claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh**

provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 163 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years i.e.** demand notice was given on 08.5.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of

receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 527/2015

Date of Institution : 21-11-2015

Date of Decision : 28-8-2017

Smt. Moon Dei w/o Shri Khem Ram, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

Whether the industrial dispute raised by the worker Smt. Moon Dei w/o Shri Khem Ram, r/o Village Kironi Mouch, P.O.Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 06.10.2011 regarding her alleged illegal

termination of services during August, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Moon Dei w/o Shri Khem Ram, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamab, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster roll basis in the year 1991 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Chuni Lal who appointed in 1997, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. she further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2001 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1995 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1995 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D, copy of reply to demand notice Ex. PW1/E alongwith mandays chart Ex. PW1/F and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 08.11.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 06.10.2011 *qua* her termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . . .*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1992 continuously worked till August, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to August, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and

25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveals that petitioner had merely worked for 130 days in the year 1994 and 56 days in 1995. At the same time, there is another document on record Ex. PW1/F which shows that petitioner had worked for 1331.5 days. Be it noticed that both the documents as referred to above have been issued by Executive Engineer, Killar (Pangi). The details of working days in Ex. PW1/F showed that petitioner had factually worked for 30 days in 1992, 160 days in 1994, 154.5 days in 1995, 145 days in 1996, 86 days in 1997, 73 days in 1998, 150 days in 1999, 118 days in 2000, 82 days in 2001, 119 days in 2002, 125 days in 2003 and 89 days in 2004 aggregating to 1331.5 days. It is further shows that in 12 years, claimant/petitioner had worked for 1331.5 days. As such, from testimony of petitioner coupled with Ex. PW1/F, it is established that petitioner had worked for 1331.5 days and not 186 days as mentioned in Ex. RW1/B. RW1 Shri D. R. Chauhan, Executive Engineer, HPPWD, Division Killar has proved Ex. RW1/B concerning mandays chart of petitioner. In cross-examination, he has admitted that mandays chart relied upon by him is not supported with any muster roll. Since document Ex. PW1/F has been signed by Assistant Engineer, I&PH Sub Division Killar (Pangi) as well as by Executive Engineer, Killar Division HP.PWD Killar (Pangi), it would be unsafe to hold that the document Ex. RW1/B is correct moreso while filing reply Ex. PW1/E dated 23.3.2012 to the demand notice issued by petitioner to respondent before the Labour Officer-cum-Conciliation Officer, Chamba has specifically admitted in para No.1 in reply that petitioner had worked for 1331.5 days as per details on working days mentioned in Ex.PW1/F. As such, it is held that petitioner had factually worked for 1331.5 days and not 186 days as reflected in Ex. RW1/B which gets falsified for respondent's own record for the reasons stated above. Be it noticed that except the years 1992

and 1995 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. PW1/F that in the year 2004 the petitioner had merely worked for 89 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 22.9.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 12 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in August, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as

daily wage privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors.* (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”
(Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it

cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel, Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Ld. Counsel for petitioner, Ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment, her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an**

important circumstances which the Labour Court must keep in view before granting relief”.

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of

HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinnon Mackenzie** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1331.5 days on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 06.10.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being

not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 567/2015

Date of Institution : 04-12-2015

Date of Decision : 28-8-2017

Shri Dharam Chand s/o Shri Kishan Chand, r/o Village Seri Bhatwas, P.O. Killar,
Tehsil Pangi, District Chamba, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H. Killar (Pangi), District Chamba, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Dharam Chand s/o Shri Kishan Chand, r/o Village Seri Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I & P H Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 25-01-2012 regarding his alleged illegal termination of services of during October, 2004 suffers from delay and laches? If not, Whether termination of services of Shri Dharam Chand s/o Shri Kishan Chand, r/o Village Seri Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I & PH Killar (Pangi), District Chamba, H.P. during October, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Suraj Ram in 1997, Jai Dass in 1998, Tek Chand in 1999, Chunku Ram in 2000, Prakash Chand in 2001, Budhi Ram in 2003 and Dharam Chand in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner

prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2002 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 25.01.2012 *qua* his termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during October, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPP*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub- Division Chamba District and remained engaged from 1994 to October, 2004. He has also stated on oath

that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 161 days in the year 1994, 151 days in 1995, 149 days in 1996, 152 days in 1997, 134 days in 1998, 144 days in 1999, 150 days in 2000, 147 days in 2001, 144 days in 2002, 162 days in 2003 and 128 days in 2004 and thus a total of his service in 1994 to 2004 in 11 years he had worked for 1622 days in his entire service period. Be it noticed that except the years 1995 to 2003 and 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 128 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 01.10.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 11 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was

not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has

resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the

power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Ld. Counsel* for petitioner, *Ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment, her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by *Ld. Dy. D.A.* for the State, *Ld. counsel* for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered

in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that

before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1622 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 25.1.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4:

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from

the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room. Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 450/2015

Date of Institution : 29-10-2015

Date of Decision : 28-8-2017

Smt. Bimla Kumari w/o Shri Dharam Singh, r/o Village Seri Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. *.Petitioner.*

Versus

The Executive Engineer, Killar, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Bimla Kumari w/o Shri Dharam Singh, r/o Village Seri Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil- received on 11.11.2011 regarding her alleged illegal termination of services during September, 2004 suffers from delay and

latches? If not, whether termination of the services of Smt. Bimla Kumari w/o Shri Dharam Singh, r/o Village Seri Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Chuni Lal who appointed in 1997, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2004 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 16.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged?
. .OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub- Division Chamba District and remained engaged from 1994 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record

as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 19 days in the year 1994, 129 days in 1996, 117 days in 1997, 103 days in 1998, 103 days in 1999, 105 days in 2000, 163 days in 2001, 115 days in 2002, 136 days in 2003 and 94 days in 2004 and thus a total of her service in 1994 to 2004 in 10 years she had worked for 1084 days in her entire service period. Be it noticed that except the years 1994 to 2000 and 2002 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 90 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document

have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. **Ld. Counsel for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. **Ld. Dy. D.A.** representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, **ld. counsel for petitioner** relied upon **Ex. PW1/D** the order dated 26.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 09 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. **Ld. counsel for petitioner** has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of **ld. Counsel of petitioner**, **ld. Dy. D.A.** for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, *Ld. Dy. D.A. for State* has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, *ld. counsel for the petitioner* has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or

unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *ld. Counsel*, *ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble**

High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to her credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had

abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/ petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six

weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1084 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 11.11.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.100,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.100,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 579/2015

Date of Institution : 04-12-2015

Date of Decision : 28-8-2017

Shri Mohan Lal s/o Shri Lekh Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Mohan Lal s/o Shri Lekh Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamab, H.P. vide demand notice dated 28-05-2012 regarding his alleged illegal termination of services during October, 2003 suffers from delay and laches? If not, Whether termination of services of worker Shri Mohan Lal s/o Shri Lekh Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamab, H.P. during October, 2003, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1996 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Suraj Ram in 1997, Jai Dass in 1998, Tek Chand in 1999, Chunku Ram in 2000, Prakash Chand in 2001, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2004 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as

required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18.5.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 28.05.2012 *qua* his termination of service during October, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during October, 2003 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

<i>Issue No.1</i>	: Discussed
<i>Issue No.2</i>	: Yes
<i>Issue No.3</i>	: Discussed
<i>Issue No.4</i>	: No
<i>Relief</i>	: Petition is partly allowed awarding compensation of Rs.90,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till October, 2003 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub- Division Chamba District and remained engaged from 1996 to October, 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where

direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 89 days in the year 1996, 118 days in 1997, 60 days in 1998, 127 days in 1999, 133 days in 2000, 79 days in 2001, 86 days in 2002, and 97 days in 2003 and thus a total of his service in 1996 to 2003 in 08 years he had worked for 789 days in his entire service period. Be it noticed that from the years 1996 to 2003 petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 97 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for

reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/D the order dated 05.10.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 11 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the

industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment, her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% P.A. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak**

Mahavidyalaya (D.Ed.) and Ors. reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/ petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 789 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **8 ½ years i.e.** demand notice was given on 28.5.2012. Taking into

consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 90,000/- (Rupees ninety thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room. Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 530/2015

Date of Institution : 21-11-2015

Date of Decision : 28-8-2017

Shri Hari Singh s/o Shri Roshan Lal, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar, I.&P.H. / H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Hari Singh s/o Shri Roshan Lal, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 09.04.2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of the services of Shri Hari Singh s/o Shri Roshan Lal, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./ H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1996 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi, Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as

'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Suraj Ram in 1997, Jai Dass in 1998, Tek Chand in 1999, Chunku Ram in 2000, Prakash Chand in 2001, Budhi Ram in 2003 and Hari Singh in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2004 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also

contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18.5.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 09.04.2012 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs. 85,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub- Division Chamba District and remained engaged from 1997 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making

correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 82 days in the year 1997, 107 days in 1998, 82 days in 1999, 131 days in 2000, 100.5 days in 2001, 111 days in 2002, 66 days in 2003 and 104 days in 2004 and thus a total of his service in 1997 to 2004 in 08 years he had worked for 783.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 104 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 22.09.2015 of Hon'ble High Court of H.P. *vide* which the orders qua termination passed as against

respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 08 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference

by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-Cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case

can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment, her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation

Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 783.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years & half year** i.e. demand notice was given on 9.4.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining

relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 494/2015

Date of Institution : 09-11-2015

Date of Decision : 28-8-2017

Shri Dharam Pal s/o Shri Chajju Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Dharam Pal s/o Shri Chajju Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 14-11-2011 regarding his alleged illegal termination of services of during September, 2001 suffers from delay and laches? If not, whether termination of services of Shri Dharam Pal s/o Shri Chajju Ram, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during September, 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1991 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section

25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurdev in 1994, Jai Dass in 1998, Tek Chand in 1999, Baldev in 2000, Trilok in 2002 and Hari Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2001 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2001 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no

necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during September, 2001 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,40,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1990 continuously worked till September, 2001 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub- Division Chamba District and remained engaged from 1990 to September, 2001. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making

correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 185 days in the year 1990, 157.5 days in 1991, 190 days in 1992, 155 days in 1993, 143 days in 1996, 210 days in 1997, 136 days in 1998, 133 days in 1999, 133 in 2000 and 99 days in 2001 and thus a total of his service in 1990 to 2001 in 10 years he had worked for 1541.5 days in his entire service period. Be it noticed that except the years 1991, 1993, 1996 and 1998 to 2001 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 99 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 27.08.2015 of Hon'ble High Court of H.P. *vide* which the orders qua termination passed as against

respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 11 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2001, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference

by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case

can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of Service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation

Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1541.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given on 14.11.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the

ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,40,000/- (Rupees one lakh forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,40,000/- (Rupees one lakh forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 523/2015

Date of Institution : 21-11-2015

Date of Decision : 28-8-2017

Shri Dev Raj s/o Shri Bhim Sen, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Dev Raj s/o Shri Bhim Sen, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 05.04.2012 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Shri Dev Raj s/o Shri Bhim Sen, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage Beldar on muster roll basis in the year 1996 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and

respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Suraj Ram in 1997, Jai Dass in 1998, Tek Chand in 1999, Chunku Ram in 2000, Prakash Chand in 2001, Budhi Ram in 2003 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2004 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18.5.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 05.04.2012 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.65,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster-roll basis in the year 1997 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written

order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 61 days in the year 1997, 78 days in 1998, 111 days in days in 2003 and 87 days in 2004 and thus a total of his service in 1997 to 2004 in 04 years he had worked for 337 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 87 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 22.9.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 04 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has

admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour

Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of

acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Ld. Counsel* for petitioner, *Ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner

for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 337 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years & half year i.e.** demand notice was given on 5.4.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT -
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 496/2015

Date of Institution : 09-11-2015

Date of Decision : 28-8-2017

Smt. Dhan Dei w/o Shri Chet Singh, r/o Village Chalali, P.O. Dharwas, Tehsil Pangi,
District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer Killar Division, H.P.P.W.D., Killar (Pangi), District
Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Dhan Dei w/o Shri Chet Singh r/o Village Chalali, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on dated 29-09-2012 regarding her alleged illegal termination of services during August, 2004 suffers from delay and laches? If not, Whether termination of services of Smt. Dhan Dei w/o Shri Chet Singh, r/o Village Chalali, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster-roll basis in the year 1990 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from the year 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India,

the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* in the year 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to 2004 be counted 160 days continuous service and regularization of the service of petitioner under regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1993 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice dated Ex. PW1/B, copy of order dated 27.8.2015 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.1,25,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster-roll basis in the year 1993 continuously worked till August, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1993 to August, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in

service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 90 days in the year 1993, 60 days in 1994, 29 days in 1995, 44 days in 1996, 211 days in 1997, 175 days in 1998, 50 days in 1999, 149 days in 2000, 55 days in 2001, 153 days in 2002, 149 days in 2003 and 82 days in 2004 and thus a total of her service in 1993 to 2004 in 12 years she had worked for 1247 days in her entire service period. Be it noticed that except the years 1993 to 1996 and 1999 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 82 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged

workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1993 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 12 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in August, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between

petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour

Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Id. Counsel*, *Id. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Id. counsel* for petitioner, *Id. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by *Id. Dy. D.A.* for the State, *Id. Counsel* for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to her credit or where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** *Ld. Counsel* for the petitioner with the aid of above-said judgment had argued that there are only **four**

situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The

Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1247 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 29.9.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4:

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 447/2015

Date of Institution : 29-10-2015

Date of Decision : 28-8-2017

Ms. Hero Devi d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Hero Devi d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated-nil-received in the Labour Office Chamba on dated 18-07-2012 regarding her alleged illegal termination of services during October, 1999 suffers from delay and laches? If not, Whether termination of services of Ms. Hero Devi d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back

wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster-roll basis in the year 1994 who continuously worked till October, 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1999. She further prayed for reinstatement in service *w.e.f.* month of October, 1999 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2005 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1995 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work

at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 16.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP*.
2. Whether termination of the services of petitioner by the respondent during October, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster-roll basis in the year 1995 continuously worked till October, 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the back-drop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to October, 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this

Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1995, 96.5 days in 1996, 15 days in 1998 and 128 days in 1999 and thus a total of her service in 1995 to 1999 in 04 years she had worked for 267.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 128 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of

Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Id. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Id. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Id. Counsel for petitioner relied upon Ex. PW1/D the order dated 13.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 04 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Id. Counsel for petitioner has contended that after petitioner's termination in October, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Id. Counsel of petitioner, Id. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Id. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir**

Singh vs. General Manager, Haryana Roadways, Hissar reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication

as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....”
(Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other

judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of

judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 267.5 days as per mandays

chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** i.e. demand notice was given on 18.7.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 505/2015

Date of Institution : 09-11-2015

Date of Decision : 28-8-2017

Miss Mehar Dei d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Miss Mehar Dei d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil- received on 18-07-2012 regarding her alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of services of Miss Mehar Dei d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the The Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster-roll basis in the year 2000 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section

25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 2000 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2009 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 2000 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no

necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D. A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil received on 18.7.2012 *qua* her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect?
..OPP.
2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster-roll basis in the year 2000 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2000 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand

taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 125 days in the year 2000, 15 days in 2001, 142 days in 2002, 119 days in 2003 and 97 days in 2004 and thus a total of her service in 2000 to 2004 in 05 years she had worked for 498 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 128 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter. Some of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2000 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 13.8.2015 of Hon'ble High Court of H.P. *vide* which the orders qua termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 05 years which entitled her for regularization of

her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co- Operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *Ld. Counsel*, *Ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *Ld. Counsel* for petitioner, *Ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during

employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and

laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 498 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 18.7.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

23. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the

facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

विधि विभाग

अधिसूचना

शिमला-2, 16 मई, 2018

संख्या एल0एल0आर0-ई(9)-12/2015-लेज.—श्री नितिन गुप्ता, अधिवक्ता, नाहन ने उप-मण्डल नाहन, जिला सिरमौर की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं ।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 के साथ पठित उक्त अधिनियम की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री नितिन गुप्ता, अधिवक्ता को उप-मण्डल नाहन, जिला सिरमौर की सीमाओं के भीतर तुरन्त प्रभाव से पब्लिक नोटरी नियुक्त करते हैं तथा यह भी निदेश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,
यशवंत सिंह चोगल,
प्रधान सचिव (विधि)।

[Authoritative English Text of this Department Notification No. LLRE (9)12/2015-Legn. Dated 16-05-2018 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 16th May, 2018

No. LLR-E(9)-12/2015-Legn.—WHEREAS, Shri Nitin Gupta, Advocate, Nahan has applied for appointment as Public Notary under the Notaries Act, 1952 (53 of 1952) and the Notaries Rules, 1956 made thereunder, within the territorial limits of Sub-Division Nahan of District Sirmaur;

AND WHEREAS, all the formalities required under the said Act and Rules have been completed;

NOW, therefore, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule (2) of rule 7A of the said rules, and in exercise of the powers conferred by section 3 of the said Act, read with rule 8 of the said rules, is pleased to appoint Shri Nitin Gupta, Advocate as Public Notary within the limits of Sub-Division Nahan of District Sirmaur, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of Notaries maintained by the Government.

By order,
Yashwant Singh Chogal,
LR-cum-Pr. Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 16 मई, 2018

संख्या एल0एल0आर0-ई(9)-1/2016-लेज.—श्री मनु भारती, अधिवक्ता, पालमपुर ने उप-मण्डल पालमपुर के अधीन उप-तहसील भवारना, जिला कांगड़ा की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के

लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षातकार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 के साथ पठित उक्त अधिनियम की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री मनु भारती, अधिवक्ता को उप-मण्डल पालमपुर के अधीन उप-तहसील भवारना, जिला कांगड़ा की सीमाओं के भीतर तुरन्त प्रभाव से पब्लिक नोटरी नियुक्त करते हैं तथा यह भी निदेश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,
यशवंत सिंह चोगल,
प्रधान सचिव (विधि)।

[Authoritative English Text of this Department Notification No. LLRE (9)1/2016-Legn. Dated 16-05-2018 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 16th May, 2018

No. LLR-E(9)-1/2016-Legn.—WHEREAS, Shri Manu Bharti, Advocate, Palampur has applied for appointment as Public Notary under the Notaries Act, 1952 (53 of 1952) and the Notaries Rules, 1956 made thereunder, within the territorial limits of Sub-Tehsil Bhawarna under Sub-Division Palampur of District Kangra;

AND WHEREAS, all the formalities required under the said Act and Rules have been completed;

NOW, therefore, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by section 3 of the said Act, read with rule 8 of the said rules, is pleased to appoint Shri Manu Bharti, Advocate as Public Notary within the limits of Sub-Tehsil Bhawarna under Sub-Division Palampur of District Kangra, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of Notaries maintained by the Government.

By order,
Yashwant Singh Chogal,
LR-cum-Pr. Secretary (Law).